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Substantial session of 1997

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties under articles 16 and 17 of the Covenant

Addendum

SWITZERLAND*

[26 June 1996]

* The information submitted by Switzerland in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.29).

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LIST OF ABBREVIATIONS

Legal texts

Cst:	Federal Constitution of the Swiss Confederation, dated 29 May 1874
CP:	Swiss Penal Code, dated 21 December 1937
CCS:	Swiss Civil Code, dated 10 December 1907
CEDH:	European Convention on Human Rights, dated 4 November 1950
CO:	Code of Obligations, dated 30 March 1911
LAA:	Federal Accident Insurance Act, dated 20 March1980
LACI:	Federal Unemployment Insurance Act, dated 25 June 1982
LAMA:	Federal Sickness Insurance Act, dated 13 June 1911
LAT:	Federal Town and Country Planning Act, dated 22 June 1979
LECCT:	Federal Act permitting extension of the scope of collective labour agreements, dated 28 September 1956
LAI:	Federal Disability Insurance Act, 19 June 1959
LFA:	Federal Act concerning family allowances in agriculture, dated 20 June 1952
LAVS:	Federal Act concerning old-age and survivors' insurance, dated 20 December 1946
LFPr:	Vocational Training Act, dated 19 April 1978
LPC:	Federal Supplementary Benefits Act, dated 19 March 1965
LPE:	Federal Environmental Protection Act, dated 7 October 1983
LPP:	Federal Act concerning old-age, survivors' and disability occupational insurance, dated 25 June 1982
Ltr:	Federal Act concerning work in industry, handicrafts and commerce, dated 13 March 1964
OLE:	Order restricting the number of aliens, dated 6 October 1986
OPA:	Order concerning prevention of accidents and occupational diseases, 19 December 1983
OLT:	Orders concerning the Labour Act

Miscellaneous

AI:	Disability insurance
ATF:	Official compendium of Swiss Federal Tribunal decisions
AVS:	Old-age and survivors' insurance
CDIP:	Conference of Cantonal Public Education Directors
CNA:	Swiss National Accident Insurance Fund
DFEP:	Federal Department of Federal Finance
OFIAMT:	Federal Office for Industry, Arts and Trades, and Labour
PC:	Benefits supplementary to AVS/AI

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Annex 2	Code civil suisse (Swiss Civil Code), dated 10 December 1907; text as at 1 April 1992.
Annex 3	Code des obligations (Code of Obligations), dated 30 March 1911; text as at 1 January 1990.
Annex 4	Code pénal suisse (Swiss Penal Code), dated 21 December 1937; text as at 1 January 1994.
Annex 5	Loi fédérale sur l'égalité entre femmes et hommes (Federal Act concerning equality between men and women), dated 24 March 1995.
Annex 6	Sickness insurance: Federal Act of 30 June 1911 and federal decrees; texts as at 1 January 1994.
Annex 7	Loi fédéral sur l'assurance maladie (Sickness Insurance Act) (LAMal), dated 18 March 1994.
Annex 8	Old-age and survivors' insurance: Federal Act of 20 December 1946 and federal decrees and orders; texts as at 1 January 1994.
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Annex 12	Compulsory unemployment insurance and indemnities in the event of insolvency, Federal Act of 25 June 1982 and Order of 31 August 1983; texts as at 1 December 1992.
Annex 13	Loi fédérale sur le statut des fonctionnaires (Federal Act containing the Regulations on Public Officials), dated 30 January 1927; text as at 1 January 1992.
Annex 14	Loi fédérale permettant d'étendre le champ d'application des conventions collectives de travail (Federal Act permitting extension of the scope of collective labour agreements), dated 28 September 1956; text as at 1 April 1992.
Annex 15	Loi fédérale sur le travail dans l'industrie, l'artisanat et le commerce (Federal Act concerning work in industry, handicrafts and commerce), dated 13 March 1964, and Orders Nos. 1, 2, 3 and 4; texts as at April 1993.

* The annexes may be consulted at the Centre for Human Rights.

ANNEXES *(continued)*

Annex 16 Loi fédéral sur la formation profesionnelle (Federal Act concerning vocational training) (LFPr), dated 19 April 1978; text as at 1 January 1992.

Annex 17 Ordonnance sur la prévention des accidents et des maladies professionnelles (Order concerning prevention of accidents and occupational diseases), dated 19 December 1983; text as at 1 April 1992.

Case-law

Annex 18 ATF 111 II 245 (art. 8)

Annex 19 ATF 120 Ia 1 (art. 13)

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Annex 20 List of ILO conventions ratified by Switzerland; text as at 1 January 1996.

Annex 21 Message concerning the Act concerning equality between men and women, dated 24 January 1994.

Annex 22 Message, dated 29 June 1994, concerning the accession by Switzerland to the Convention on the Rights of the Child.

Annex 23 Report of the Federal Council on Switzerland's North-South relations in the 1990s, dated 7 March 1994.

Annex 24 "Vers l'égalité? Aperçu statistique de la situation des femmes et des hommes en Suisse" (Towards equality? A statistical overview of the situation of men and women in Switzerland), Federal Statistical Office, Bern, 1993.

Annex 25 La situation des femmes et des hommes sur le marché du travail, une analyse des données de l'enquête suisse sur la population active 1991 (The situation of women and men in the employment market, an analysis of data from the 1991 Swiss survey on the active population), Federal Statistical Office, Bern, 1994.

Annex 26 Les institutions de sécurité sociale en Suisse, panorama statistique 1915-1990 (Social security institutions in Switzerland, statistical survey 1915-1990), Federal Statistical Office, Bern, 1992.

Annex 27 Genres et montants des allocations familiales (Types and amounts of family allowances), Federal Social Insurance Office; status as at 1 January 1995.

Annex 28 Familles d'aujourd'hui, l'image de la famille dans le recensement fédéral de la population de 1990 (Families today, the image of the family in the 1990 federal population census), Federal Statistical Office, Bern, 1994.

Annex 29 Profil— La santé en Suisse (Profile—Health in Switzerland), WHO, July 1993.

Annex 30 Système de formation en Suisse, éléments à une mosaïque (The training system in Switzerland, pieces in a mosaic), Federal Office of Finance, Federal Administration of Finance, CESDOC, Bern, 1991.

Annex 31 Les indicateurs de l'enseignement en Suisse (Education indicators in Switzerland), Federal Statistical Office, Bern, 1993.

Introduction

1. The Federal Council has the honour to submit to the Committee on Economic, Social and Cultural Rights the initial report of Switzerland, prepared under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. This report describes the measures adopted and the progress made in the implementation of the rights enshrined in the Covenant since it entered into force for Switzerland on 18 September 1992. In principle, the report takes account of the status of legislation as at 1 January 1995. It should be read in conjunction with the core document submitted by Switzerland on 2 July 1993 (HRI/CORE/1/Add.29), which forms the first part of this report.

2. Owing to the federal structure of Switzerland, certain rights guaranteed by the Covenant on Economic, Social and Cultural Rights lie within the competence of the cantons (examples are the rights to education, health and family allowances) and in certain cases within that of the communes. In such cases the report offers a summary analysis of the situation and of the features which are common to all 26 cantonal systems and, where appropriate, to communal systems.

3. This report is the outcome of close cooperation and coordination among the different administrative authorities concerned by the implementation of the Covenant. In addition, it was in its draft form the subject of to a broad consultation procedure involving the cantons, the organizations concerned and non-governmental organizations. It was approved by the Federal Council on 8 May 1996.

4. This report was prepared in French; it has been translated into German, with the French text remaining the authentic one. It is available in either language on request from the OFIAMT, International Affairs Branch, Bundesgasse 8, 3003 Bern.

5. The Federal Council trusts that this initial report will meet the expectations of the Committee on Economic, Social and Cultural Rights and that its examination will provide an opportunity for a fruitful dialogue.

I. ARTICLE 1: RIGHT OF SELF-DETERMINATION OF PEOPLES

A. Right of self-determination of peoples

6. By establishing a Federal State the 26 cantons and demi-cantons which make up the Swiss Confederation renounced part of their sovereignty in favour of a central authority. This means, in particular, that a canton may be obliged to accept an amendment to the Federal Constitution against its will, since the Constitution may be amended by double majority of the people and of the cantons. Furthermore, a canton does not have the right of secession. In the hypothetical event that a canton did wish to leave the Confederation, this could only be effected by a majority decision of its inhabitants entitled to vote, followed by a vote of the people and of the cantons on a corresponding amendment to the Federal Constitution. In 1978 a similar procedure led to the establishment of the canton of the Jura, the territory of which previously formed part of the canton of Bern.

7. The cantons are, however, largely autonomous and free to determine their political organization, subject to the guarantee which the Federal Assembly must grant to their Constitutions. This guarantee is granted provided that the cantonal Constitution contains nothing inconsistent with the Federal Constitution, it ensures the exercise of political rights according to representative or democratic republican forms, it has been accepted by the people and it may be amended if an absolute majority of the citizens so demand (article 6 of the Federal Constitution). Should the guarantee be refused, a cantonal constitutional law which does not fulfil these conditions is deprived of all legal force *ex tunc*.

8. Reference is made to the paragraphs in the core document (HRI/CORE/1/Add.29) concerning the organization of federal powers and the rights of constitutional initiative and legislative referendum in the context of the system guaranteeing the formation of the popular will at federal level in both the political sphere and that of economic, social and cultural development. Here we will merely stress the importance of the popular rights which require or enable citizens to have their say on a large number of topics at federal, cantonal or communal level.

B. Right of peoples to dispose of their natural resources

9. Natural resources play only a limited part in the economic activity of the country. Economic development relies more on the processing and service industry sectors, in which exporting industries play an important part. Switzerland is aware of the increasing globalization of the economy and the increasing interdependence of national economies and is implementing a policy to promote fairer trade, particularly with developing countries.

10. Article 31 of the Constitution guarantees freedom of trade and industry. In practice it is generally private enterprises or individuals which exploit the country's natural resources in the exercise of this freedom. However, the Confederation retains a monopoly on a few activities, such as the manufacture and sale of gunpowder (art. 41 of the Constitution). Cantonal monopolies derive either from the Federal Constitution (trading in salt, hunting, fishing; art. 31, para. 2, of the Constitution) or, within constitutional limits, from cantonal or communal regulations. Redistribution of wealth is effected through cantonal or federal tax laws, which are subject to adoption by popular vote.

C. Respect of the right of self-determination of peoples

11. Switzerland attaches great importance to respect for international standards established in conventions and usages governing relations between States. In compliance with its international obligations, it abstains from

any interference in the internal affairs of other States. During the 1990s Switzerland's foreign policy has been focused on the following five priority objectives:[1]

(a) The maintenance and promotion of peace and security;

(b) A commitment to human rights, democracy and the principles of the rule of law;

(c) The advancement of common prosperity;

(d) The promotion of social cohesion;

(e) The preservation of the natural environment.

12. Switzerland is a committed supporter of human rights and humanitarian law. New evidence of this position is given by the recent accession of Switzerland to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination. As the depositary State of the four Geneva Conventions for the Protection of Victims of War and of the two protocols additional thereto, it intervenes to support the activities of the International Committee of the Red Cross and reminds all parties to an armed conflict of their obligation to comply with those agreements. The Federal Council has unequivocally condemned the policy of apartheid since the United Nations International Conference on Human Rights, held in Tehran in 1968. Since 1986 the Development and Cooperation Directorate (DDC) has been implementing a programme of positive measures designed to contribute to the anti-apartheid campaign, primarily by means of contributions to NGOs on the basis of local initiatives. Since 1994 cooperation has been extended to include State institutions. Switzerland also supports multilateral technical cooperation programmes in South Africa conducted under the auspices of the International Labour Organisation (ILO).

[1] *Rapport du Conseil fédéral sur la politique extérieure de la Suisse dans les années 90* (Report of the Federal Council on Switzerland's foreign policy during the 1990s), 29 November 1993.

II. ARTICLE 2: IMPLEMENTATION OF THE RIGHTS RECOGNIZED

A. Progressive realization

1. General

13. It would be impossible to describe in this report all the measures taken or contemplated at federal, cantonal or communal levels with a view to achieving progressively the full realization of the rights guaranteed by the Covenant. This section seeks to give an idea of federal competence in this field. It must be remembered that in the Swiss federal system each canton is sovereign to the extent that its sovereignty is not restricted by the Federal Constitution, which attributes a certain number of powers to the federal authorities.[2]

14. The Federal Constitution contains a number of articles relating to economic, social and cultural rights, but does not lay down any general principles on the subject. It should be mentioned here that several recently revised cantonal constitutions (for instance, the constitutions of the cantons of the Jura, Basel-Country and Bern) specifically provide guarantees economic, social or cultural rights.

15. Article 2 of the Constitution reads as follows:

> "The purpose of the Confederation is to secure the country's independence from foreign countries, to maintain peace and order within the country, to protect the freedom and the rights of Confederation citizens and to increase their common prosperity".

16. The drafting of this article clearly does not reflect a social approach. However, on the basis of the numerous provisions of a social nature added to the Federal Constitution over the years, it can now be read as more correctly reflecting present-day circumstances and an intention to promote the prosperity of all.

17. Although the Federal Constitution contains no social clauses of a general character, it nevertheless enshrines a number of rights of a social nature in its specific provisions. The relatively large number of provisions of this type is attributable to the need to give all federal legislation a constitutional basis in accordance with the principle of the attributive competence of the Federal State and with that of the legality of action by the administration. In fact, certain articles of the Constitution (for example, art. 34, para. 1, concerning provisions relating to labour law, art. 34 *bis* concerning accident insurance and art. 64, empowering the Confederation to legislate in various fields) simply attribute powers to the federal legislature. Others (such as arts. 34 *quater* concerning old age and health insurance, art. 34 *quinquies* concerning measures benefiting families and art. 34 *novies* concerning unemployment insurance) are more specific. On this constitutional basis a substantial body of federal legislation in the economic, social and cultural fields has developed and is still developing today. That legislation will be described in the relevant chapters of this report.

18. However, laws are not the only instruments which help to give concrete effect to social, economic and cultural rights. The international treaties ratified by Switzerland form an integral part of the Swiss legal order, and the Federal Tribunal is required to apply them (art. 113 of the Constitution). In addition, in the field of fundamental rights the Federal Tribunal has also defined by interpretation certain unwritten constitutional rights,

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[2] On this subject see the core document serving as an introduction to the report submitted to the supervisory bodies concerned with the human rights conventions (HRI/CORE/1/Add.29, paras. 22-25).

such as the right to personal freedom, the right of freedom of expression and the right of assembly.[3] In the field of labour law these sources are further rounded out by collective agreements negotiated by the social partners (employers/workers' associations) in a particular sector and which are subsequently applied to their contractual labour relations. In certain cases these collective agreements may depart from the law if their terms are more favourable to the worker. Under the terms of article 34 *ter*, paragraph 1, subparagraph (c) and paragraph 2, of the Constitution, the scope of collective agreements for a particular branch may be extended throughout the territory of a canton or throughout the country as a whole.

2. Development cooperation and the promotion of the exercise of economic, social and cultural rights

19. The Federal Act of 19 March 1976 concerning development cooperation and international humanitarian aid lays down the framework for cooperation by Switzerland. It focuses on two objectives: helping disadvantaged population groups; and assisting to developing countries to control their development. The text of article 5 of the Act, which defines the purposes of cooperation, reads as follows:

> "1. It shall give priority support to the efforts of developing countries to improve the living conditions of their peoples. It must help to enable those countries to achieve their development by their own efforts. In the long term it shall seek to promote better equilibrium within the international community.
>
> "2. It shall give priority support to the efforts of the most disadvantaged developing countries, regions and population groups. In particular, it shall promote:
>
> (a) Rural development;
>
> (b) Better nutritional standards, in particular by means of food crops for local consumption;
>
> (c) The promotion of handicrafts and small local industries;
>
> (d) Employment creation;
>
> (e) The search for and maintenance of ecological and demographic equilibrium."

20. The report of the Federal Council on Switzerland's North-South relations during the 1990s also stresses the promotion of human rights within the framework of development cooperation in as much as it sets as one of its four priority objectives "the safeguarding and maintenance of peace and security and the promotion of human rights, democracy and the rule of law".

21. In 1994 Swiss bilateral aid amounted to Sw F 1,317 million (the equivalent of 0.36 per cent of GNP). This aid is provided through bilateral (75 per cent) and multilateral (25 per cent) channels. Development cooperation is the principal instrument of Switzerland's development policy designed to promote the realization of economic, social and cultural rights.

22. Switzerland's bilateral aid statistics are not compiled in a manner corresponding to the rights laid down in the Covenant. The provisional pattern of its sector-by-sector distribution during 1994 is as follows:

Agriculture, stock-rearing	12 per cent
Forests and environment	14 per cent
Infrastructure, water, energy	12 per cent

[3] On the status of international treaties in internal law and unwritten constitutional rights, see the core document, op. cit.

Handicrafts, industry and commerce	6 per cent
Economy, finance and services	8 per cent
Social policy, administration, justice	7 per cent
Education, information and culture	7 per cent
Health, nutrition, population	14 per cent
Not classified	20 per cent
Total	100 per cent

B. Non-discrimination

23. As the report on the different articles of the Covenant will show, the rights embodied therein enjoy broad recognition in Swiss law. Article 4, paragraph 1, of the Federal Constitution lays down the general principle of the equality of all individuals, without discrimination, as follows:

> "Article 4.
>
> "All Swiss are equal before the law. In Switzerland there are no subjects nor any privileges of place, birth, person or family."

24. The second paragraph of this article, introduced in 1981 and relating specifically to equality between men and women, will be examined in the chapter dealing with article 3 of the Covenant.

25. Paragraph 1 of article 4 was originally designed primarily to ensure political equality for citizens, to place all the cantons on an equal footing and to eliminate privileges attached to place or birth. Equality before the law has, however, long since acquired the status of a general principle governing the entire Swiss legal order. It applies both in the realm of legislation (equality within the law) and in that of the application of the law (equality before the law).

26. As a constitutional principle, equality applies primarily to the prohibition of unjustified distinctions; but it also, to some extent, provides a mandate for the legislature to reduce social inequalities and improve the individual's opportunities for personal fulfilment. Thus, in various provisions of the Constitution, the Confederation is assigned the task of improving equality of opportunity. This is principally the case with regard to public education and training (art. 27, paras. 2 and 4, art. 27 *quater* and 34 *ter*, para. 1 (g), of the Constitution), social insurance (art. 34 *bis*, *quater*, *quinquies* and *novies*) or worker protection (art. 34 and art. 34 *ter)*. It should be noted that article 113, paragraph 1 (3), of the Constitution requires the Federal Tribunal to apply, in every case, the federal laws and decrees of general scope adopted by the Federal Assembly, as well as the treaties ratified by the latter. This provision is democratically inspired since it is designed to prevent a court from declaring unconstitutional a text that has been submitted to an optional popular referendum and thus accepted by the people, even tacitly; nevertheless, it prevents monitoring of the constitutionality of federal laws and their conformity with basic constitutional rights. It may thus be said that there is no full federal constitutional monitoring. The rule embodied in article 113 of the Constitution does not, however, prevent the Federal Tribunal from noting the incompatibility of a federal law with the Constitution, thus prompting the legislator to remedy the situation.

27. One of the peculiar features of article 4 of the Constitution lies in the number and importance of the constitutional rights and principles which the case-law of the Federal Tribunal has derived from it. These jurisprudential rules are highly diverse (equality of freedom, protection of good faith, prohibition of the denial of justice, prohibition of unjustified delay in giving a judgement and of excessive formality, the right to be heard

and the right to free legal assistance, the principle of legality and proportionality and the non-retroactivity of legal provisions).

28. The Federal Tribunal has recognized that, contrary to the letter of article 4 of the Constitution, the right to equality extends not only to Swiss citizens but also to aliens. [4] However, the fact of being an alien may provide objective grounds for a difference in treatment when Swiss nationality plays a cardinal role in the matter to be regulated. This applies particularly with respect to civic rights and obligations. Likewise, article 69 *ter* of the Constitution empowers the Confederation to legislate on the entry and departure of aliens and their sojourn or establishment.

29. More specifically in the field of economic, social and cultural rights, certain elements of discrimination exist with regard to aliens, who are sometimes subject to specific sets of rules which are more restrictive than those applicable to persons of Swiss nationality.

30. This is particularly the case with the right to work, which is guaranteed by article 6 of the Covenant. It is a fact that certain categories of foreign workers do not enjoy full freedom of movement and of choice of occupation. This is because permits issued by the aliens police are valid only in the canton in which they are issued. An alien holding a permit of sojourn or establishment in one canton may work for one week in another canton; but gainful employment for a longer period requires the prior assent of the canton concerned, which thus stands in lieu of an additional permit.

31. There are also differences of treatment in the social security field which place aliens at a disadvantage. Finally, admission of aliens to higher education is subject to different conditions, particularly with regard to payment.

32. It may also be mentioned in this context that access to higher posts in the public service at communal, cantonal or federal levels is generally reserved for Swiss nationals; this is in fact authorized under article 25 of the International Covenant on Civil and Political Rights. Likewise, case-law finds the legal exclusion of aliens from certain occupations compatible with article 4 of the Constitution. For instance, the Federal Tribunal has held that the exercise of the profession of advocate may be reserved for Swiss citizens only; however, it has admitted exceptions, particularly when it would appear unreasonable to require a candidate for the bar first to acquire Swiss nationality (as in the case of a foreign jurist who has studied law in Switzerland).[5] Finally, in its recent practice, the Federal Tribunal has agreed to extend freedom of trade and industry (art. 31 of the Constitution) to aliens holding establishment permits provided that they are legally admissible to certain occupations. [6]

33. The Federal Tribunal has also recognized that bodies corporate under private law may avail themselves of article 4 of the Constitution. However, this right is guaranteed to bodies corporate under public law only within certain limits.

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[4] ATF 93 I 1; ATF 108 Ia 158.

[5] Decision of the Second Court of Public Law of the Federal Tribunal dated 24 February 1984. Published in ZBl. 1984, pp. 45 ff., ATF 116 Ia 238 and 119 Ia 35.

[6] ATF 108 Ia 148.

III. ARTICLE 3: EQUALITY BETWEEN MEN AND WOMEN

A. Constitutional and legislative aspects[7]

34. Article 4, paragraph 2, of the Federal Constitution reads as follows:

> "Men and women have equal rights. The law provides for equality, in particular in the areas of the family, education and work. Men and women are entitled to equal pay for work of equal value."

35. This provision, accepted by the people and the cantons on 14 June 1981, contains three elements. Firstly, it defines a fundamental right (first sentence); secondly, it gives the legislature a mandate to provide for equality (second sentence); finally, in the last sentence it sets forth a directly applicable fundamental right, namely the right to equal pay for work of equal value.

The principle (art. 4, para. 2, first sentence)

36. This is an imperative rule binding on all State authorities. It is also a fundamental right of direct application which may be invoked in the courts by both men and women.

37. The first sentence of paragraph 2 of article 4 prohibits all differentiation on grounds of sex. This prohibition admits only two types of exceptions. Firstly, there are exceptions deriving from other constitutional provisions. Today articles 18 and 22 *bis* of the Constitution, whereby women are released from the obligation of military service[8] and civil defence, are the only remaining exceptions of this kind. Secondly, different treatment may be justified and even necessary when a biological difference absolutely excludes the possibility of equal treatment. For instance, protection during pregnancy and motherhood may justify differences in treatment.

The legislative mandate (art. 4, para. 2, second sentence)

38. Equality of opportunity for the sexes, as well as *de jure* parity, must be a prime consideration of the legislature, which is given an explicit constitutional mandate on this point, particularly in the three crucial areas of family, education and employment. At all levels, whether federal, cantonal or communal, provisions must be worded in such a way as to guarantee *de jure* equality and to promote de facto equality between men and women.

39. The second sentence of article 4, paragraph 2, enables the legislature to adopt measures in favour of women to eliminate de facto discrimination suffered by them in society (affirmative action). Measures of this kind constitute exceptions to the prohibition on discrimination in the first sentence of the same paragraph. However, they should be admitted by reference to the second sentence of paragraph 2 to the extent that they comply with the principle of proportionality (suitability, necessity, subsidiarity and weighing of interests with other public interests affected) and are based on an adequate legal foundation.

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[7] See also the reports of Switzerland on the application of ILO Conventions No. 100 and No. 111.

[8] In accordance with article 3 of the Federal Act concerning the army and the military administration, dated 3 February 1995, women may serve in the army on a voluntary basis, in which case they have the same rights and duties as male soldiers. However, the Federal Council may provide for exceptions, particularly with regard to release from military service, the period of service, assignment and promotion. In 1970, 101 women soldiers were trained. By 1980 the number had increased to 326. In the years 1990-1992 the numbers were 95, 63 and 64 respectively.

40. The legislative mandate inherent in this provision is gradually being applied at policy level. Following a parliamentary intervention, the Federal Council published a report in 1986 on the legislative programme "Equality of rights for men and women". This programme establishes a list of provisions that do not comply with the principle of equality between men and women with a view to abolishing or amending them. Although many reforms have already been implemented to date, others are still in progress or pending.

41. Among the inequalities which have already been eliminated, mention should be made first of all of voting and eligibility rights, which were granted to women at federal level by vote on 7 February 1971 after several unsuccessful attempts. At the cantonal level, although women already had these rights in certain cantons (Neuchâtel and Vaud since 1959; Geneva since 1960; Basel-Town since 1966; Ticino in 1979; and Valais, Basel-Country, Lucerne and Zurich since 1970), other cantons were slower in granting them. The demi-canton of Appenzell Inner-Rhoden was the last to give its women citizens the right to vote and be elected at cantonal and communal levels, following a ruling of the Federal Tribunal dated 27 November 1990 and based on article 4, paragraph 2, of the Constitution.

42. The law governing marriage has also been revised, effective 1 January 1988. In particular, the new law has contributed to eliminating the dominant role of the man in the family, encouraging partnership of the spouses with equality of rights and duties. It also provides that occupational and educational activities, looking after children and work in the home are equivalent contributions to the maintenance of the family unit. The rights of inheritance of the surviving spouse have been strengthened, and the standard marriage contract (sharing of acquired assets) respects the equality of the spouses. Finally, the wife may, if she so wishes, keep her family name after marriage. She will then use it together with and before that of her husband, whose name is still taken by the children.

43. It should be noted that the part of the Civil Code relating to the conclusion of marriage, divorce, family status, filiation, alimony and guardianship is currently being revised. Information on the results of these revisions will be provided in the next periodic reports.

44. With regard to the acquisition and loss of Swiss nationality, the Act of 29 September 1952 has also been amended to establish equality between men and women. The new legislation, which has been in force since 1 January 1992, sets the same conditions for the acquisition of nationality for both sexes. Whereas previously only a woman could become Swiss by marriage to a Swiss national, the foreign spouse of a Swiss man or woman may now qualify for facilitated naturalization without regard to sex. A Swiss woman who marries a foreigner no longer loses her Swiss nationality by so doing (as used to be the case unless she made an express declaration).

45. The Act of 26 March 1931 on the sojourn and establishment of aliens has also undergone some amendments. Since 1 January 1992 the foreign spouses of Swiss nationals of either sex have had the same right to the granting of permits of sojourn and extensions thereto. Sex equality is also respected regarding permits of establishment.

46. The legislation on social welfare and labour law are also being revised, and a draft law on maternity insurance is in course of preparation. These matters will be covered in the relevant chapters of this report.

Equality of remuneration (art. 4, para. 2, third sentence)

47. In view of its importance, this guarantee forms the subject of a special provision. The right to equality of remuneration is both a fundamental right and an imperative rule of civil law. Unlike other individual rights, which can only be asserted against State authorities, this right may also be invoked in the courts with regard to

relations between individuals. As an imperative rule it is incorporated in the law regarding unemployment contracts and the regulations governing the status of public officials. Its field of application is general, covering both the public service[9] and private-law relationships. It implies that men and women employees must receive the same remuneration for equal work or work of equal value. This applies not only to the wage or salary itself, but also to family allowances and other work-related benefits. The right to equal remuneration also applies to activities which are different but of equal value.[10] There is controversy as to whether equality should be evaluated within a single enterprise or over the entire economic branch concerned, particularly where pay is governed by a collective labour agreement.

48. Despite the fact that article 4, paragraph 2, of the Constitution was introduced in 1981 and that equality of remuneration is a directly applicable principle, its practical implementation is still far from complete, particularly in private-sector enterprises. It can also be observed that women are in the majority in the lowest-paid jobs. According to the Swiss survey of the economically active population, average women's earnings are 75 per cent of those of men. However, the survey does not provide information sufficient to ascertain to what extent these pay differentials are due to wage discrimination, to objective differences between women's and men's employment or to differences in wage levels in different economic sectors (see under art. 7).

49. Among the other factors making for work-related inequality, mention should be made of the family allowance and occupational insurance systems. These are designed for persons working full-time; they penalize persons working part-time (the majority of whom are women). Finally, the persons exposed to the risk of sexual harassment at the workplace are almost exclusively women.[11]

50. The Federal Council is aware of the scale and importance of the work still to be done in order to achieve equality of the sexes in employment. On 24 February 1993 it adopted a message concerning a Federal Act concerning equality between men and women. The Act was adopted by Parliament on 24 March 1995 and will come into force on 1 July 1996. It is primarily designed to facilitate respect of the right for equal remuneration guaranteed by the last sentence of article 4, paragraph 2, of the Constitution; it also has the more general objective of promoting sex equality in the employment field.

51. The principal innovations in the Act are:

(a) Prohibition of all sex-based discrimination in employment;

(b) Easing of the burden of proof; when a woman worker has demonstrated the likelihood of discrimination, it is for the employer to prove that there has been none;

(c) A right of action and recourse conferred on trade unions and organizations active in the field of sex equality;

(d) Increased protection against sexual harassment;

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[9] ATF 106 Ib 190; 109 Ib 88.

[10] ATF 117 Ia 262, 117 Ia 270, ZBl. 90/1989, p. 203 and ZBl. 84/1983, p. 277.

[11] According to a survey conducted in the canton of Geneva, 55 per cent of women questioned admitted that they had encountered this problem during the past two years. The proportion is significantly higher among women whose occupational status is precarious (low level of training, low pay, aliens with short-term or seasonal permits of sojourn and clandestine workers).

(e) The possibility of obtaining the annulment of retaliatory dismissal;

(f) An obligation on the cantons, which are competent in this area, to establish a conciliation procedure.

52. The Act also provides for financial assistance to promote the establishment of programmes of action (for example, in the field of vocational training) by public or private organizations to promote equality between men and women.

53. In the action which the State has a duty to undertake to promote sex equality in employment, special attention should be drawn to the campaign against sexual harassment. This is possibly the most serious form of sex-based discrimination at the workplace. Women are all the more exposed to it where their conditions of employment are precarious and they therefore have little scope to defend themselves without risking retaliation. This is why the Act on equality establishes the liability not only of the perpetrator of such action (he is already criminally liable under articles 187 ff. of the Penal Code) but also that of the employer where circumstances indicate that he has not taken all steps he could reasonably be expected to take to prevent or put an end to the harassment.

54. New measures will clearly be necessary in other areas, such as social, family or training policy. These measures will be the responsibility not only of the Confederation but also of the cantons and the social partners themselves.

B. Practical measures and quantified data[12]

Offices of equality[13]

55. In order to promote equality between men and women "offices of equality between men and women" have been established. In 1995 there was one at federal level and others in 14 cantons and 4 communes. However, in view of the difficulties currently facing the cantons, some offices of equality (in Zug and Neuchâtel) have been closed and others have been downsized. As an example of the activities of these offices, those of the Federal Office for Equality between Women and Men may be summarized as follows: the Office's task is to promote sex equality in every area of life in society. It strives to eliminate all forms of discrimination against women and prepares decisions and measures designed to promote and ensure equality. It works in collaboration with the cantonal, communal or non-governmental bodies active in this field. It advises authorities and individuals and prepares and supports activities to promote sex equality. Finally, it is responsible for informing public opinion on equality matters and reporting periodically on its activities, on the implementation of the legislative programme concerning equality between men and women and on the actual situation and progress achieved. In this context it is involved in the preparation of the reports which Switzerland submits to the organs supervising human rights conventions. Currently the Federal Office for Equality, which reports to the Federal Department of the Interior, has five women employees, four of them working part-time.

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[12] Most of the figures given below are taken from the message of the Federal Council concerning the Federal Act concerning equality between women and men, dated 24 February 1993 (annexed). See also: *Vers l'égalité? Aperçu statistique de la situation des femmes et des hommes en Suisse* (Towards equality? A statistical overview of the situation of men and women in Switzerland), Federal Statistical Office, Bern, 1993 (annexed).

[13] Reference is made to Switzerland's reports on the application of ILO Conventions Nos. 100 and 111.

Representation of women in political life and public service

56. As a result of the 1995 legislative elections, 41 women hold seats in the National Council (20.5 per cent of the total membership, as against 17.5 per cent in 1991) and six now sit in the Council of States (13.6 per cent, as against 8.7 per cent in 1991). On 1 January 1995, 21.3 per cent of members of cantonal parliaments were women; in three cantonal parliaments (Geneva, Solothurn and Aargau) the proportion of women exceeded 30 per cent. The seven members of the Federal Council include one woman (since 1 April 1993 and for a second term). At the cantonal level, the executive bodies of 14 cantons (out of the 26) include one woman; in the executive bodies of the cantons of Bern, Appenzell (Outer-Rhoden) and St. Gallen there are two women. The situation in communal executives is extremely varied, but generally speaking the percentage of women is higher in executives in towns than in those of rural communes. The Federal Tribunal has three women judges (out of 30), one woman alternate judge (out of 15) and two women extraordinary alternate judges. There are three women among the 18 judges (9 titular and 9 alternate) of the Federal Insurance Court. Mention should be made here of the launching of a popular initiative (the initiative of 3 March) entitled "For equitable representation of women in the federal authorities".

57. On 18 December 1991 the Federal Council issued directives designed to promote the appointment of women in the federal administration. Under these directives, when a post is opened to competition, preference, subject to equality of qualifications, is to be given to women for as long as they are under-represented in the administration. Some cantons have promulgated similar provisions.

Training

58. The number of women in institutions of higher education decreases as the level of education rises; thus, although as many girls as boys obtain certificates of completed secondary education (*maturité*), only three university teaching chairs out of almost 100 are held by women.

59. In 1993/94, 40.7 per cent of the students in institutes of higher education in Switzerland were women. At present the universities of Geneva and Lausanne are the only ones with a majority of women students (54.3 per cent and 50.1 per cent respectively). Women are well represented in the fields of human and social sciences and are in a majority in the disciplines of philosophy, languages and literature (64.9 per cent), social sciences and sports (62.9 per cent) and history (51.6 per cent). They make up 42.7 per cent of law students and 48.5 per cent of medical students. Women are most significantly under-represented in the exact sciences, with the exceptions of architecture and earth sciences.

60. The number of women who have received vocational training has increased by 3 per cent during the last 10 years. In the academic year 1993/94, women accounted for 41.2 per cent of numbers at vocational schools, compared with 38.9 per cent in 1980/81. Over the same period the statistics show a slow but steady increase in the numbers of women in the so-called "male" occupations. In industry and crafts they now make up 9.1 per cent of the labour force as against 6.6 per cent 10 years ago; in the technical professions, 23.9 per cent as against 19.3 per cent; and in the legal and public order sectors, 17 per cent as against 9.7 per cent. The most striking advance has taken place in the transport sector, in which the proportion of women has risen from 32.7 per cent to 47.7 per cent of all workers in the sector.

Participation of women in working life

61. Approximately 54 per cent of women aged over 15 are engaging in gainful activity for at least one hour every week; the corresponding figure for men is 76 per cent. The percentages of economically active persons are comparable for the two sexes among persons in the 14-24 age groups (60 per cent of whom engage in gainful

activity). In contrast, only 72 per cent of women between ages 25 and 54 (as against 95 per cent of men) are economically active.

Modalities of employment

62. Eighty-four per cent of persons engaging in part-time occupational activity are women. In fact, full-time employment is the rule only for young women without children. There is clearly a link between working time and the family situation. Most women have a full-time gainful activity only when they have no children under age 14. Thus part-time activity is a specific feature of women's employment, closely connected with the presence of children aged under 14 years. However, although part-time work may be seen as an opportunity for women, to the extent that it enables them to reconcile a gainful activity with family life, it is also an appreciable obstacle to the realization of true equality between men and women. For instance, this form of work has negative repercussions on certain social insurance benefits and often does not provide sufficient income to enable women to support themselves independently. It may also lead to a perpetuation of the traditional division of roles between the sexes. These factors should be borne in mind when implementing an equality policy.

Occupational situation

63. Men and women do not have the same types of jobs, whether with regard to the occupation exercised, the branch concerned or positions in the occupational hierarchy. These differences show a degree of segregation by sex in the employment market; in over half of all listed occupations, more than 90 per cent of the persons engaged are of one sex, but only 10 per cent of those occupations are over 90 per cent staffed by women.

64. Thus there is a clear predominance of women in the health, education and other services, restaurants and retail sales sectors. In contrast, they are extremely under-represented in industry, crafts, the building trades and insurance. In some occupations there are hardly any men at all (keyboard operators, pharmaceutical assistants, qualified nurses, kindergarten teachers, etc.). The occupations in which women are strongly represented generally reflect the traditional role assigned to them in society and are frequently less prestigious and less well paid than the typically "male" occupations.

65. As regards positions in the occupational hierarchy, about one third of self-employed persons or employees in supervisory positions are women. At managerial level women only make up one fifth of the total. The proportion of women heads of enterprises or general managers is 1.5 per cent, whereas they occupy 17 per cent of senior supervisory positions.[14]

[14] The study "Schweizer Kadergehälter 1992" see *Schweizer Handels Zeitung*, No. 36, 3 September 1992.

IV. ARTICLE 4: LIMITATIONS ON THE ENJOYMENT OF RIGHTS

66. Although not explicitly stated in the text of the Federal Constitution, it is accepted in Switzerland that fundamental rights are not absolute and may be subject to restrictions. According to the case-law of the Federal Tribunal, the fundamental rights guaranteed by the Constitution may be restricted when that restriction meets the following four conditions:

(a) It must rest on a legal basis;

(b) It must be justified by an overriding public interest;

(c) It must comply with the principle of proportionality and the other liberal principles;

(d) It must respect the essence (the "hard core") of the fundamental right and not void the latter of its substance.

67. Subject to certain exceptions (and in particular the "general police clause"), every restriction must be based on a formal legal text, the clarity of which must be proportionate to the seriousness of the impairment of the fundamental right in question. Where economic freedoms are concerned, the Constitution requires the form of an Act or a Federal Decree on which a popular vote may be requested.[15] However, current legal thinking holds that this requirement concerning the formal legal basis is less absolute than it appears to be, for it is only binding on the federal legislature and does not entirely exclude all legislative delegation.

68. Switzerland has no accepted and exhaustive definition of the concept of public interest. As a minimum, the latter includes what may be termed "police values", namely public order and security, public health, public peace and (to justify certain restrictions on economic freedom) good faith in business dealings.[16] According to the freedoms concerned, the public interest may also embrace other values—social or cultural, historical or scientific, or relating to the protection of the environment, national development or energy saving. The public interest also embraces the fundamental rights of other persons; for instance, the legislature may restrict one fundamental right in order to protect another. Finally, the public interest may vary in time and space. For instance, a restrictive measure which may have been justified in the nineteenth century may no longer be so today;[17] or a restriction may be acceptable in a village but not in a city.[18]

69. The principle of proportionality requires "firstly, that the means used is appropriate for the achievement of the goal of public interest pursued and affects individual freedom to the least possible extent; and secondly, that there is a reasonable relationship between the anticipated result and the restrictions on freedom that it

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[15] See article 32, paragraph 1, of the Constitution.

[16] Standard phrasing used in case-law. See ATF 116 Ia 355, 356; 118 Ia 175, 177; 119 Ia 41, 43.

[17] See ATF 108 Ia 41, 45-46.

[18] See ATF 106 Ia 267, 271-172.

requires".[19] According to recent legal thinking and case-law, the principle of proportionality is made up of three subsidiary principles:[20]

(a) Suitability: the restriction must be appropriate for the achievement of the goal of public interest being pursued and must not fail to attain that goal;

(b) Indispensability: considered from the material, spatial, temporal and personal standpoints, the restriction must not be more severe than necessary for the attainment of the desired goal. Where several possible means of attaining a goal are available, the one which least impairs the interests of the individual must be chosen;

(c) Proportionality *stricto sensu*: the restriction must not only be suitable and indispensable but also bear a reasonable relationship to the goal sought. In other words, in a particular situation the goal of public interest sought will outweigh the impairment of freedom.

70. The other liberal principles mentioned are those of good faith, non-retroactivity and equality; they will not be discussed in detail here.

71. A measure which is legal, justified and proportionate may nevertheless unconstitutionally impair a fundamental right when it affects the essence (intangible core) thereof. Admittedly, the legislature is empowered to enact rules restricting fundamental rights; but its competence is restricted by the intangible core of those rights, and if it were to take measures voiding a right of its substance it would be violating the guarantee of that right. The courts are equally bound by the guarantee of the intangible core. A judge who establishes the existence of a violation of this guarantee will not proceed to ascertain whether the conditions justifying a restriction are met; on the contrary, he is required to rule the measure illicit without proceeding further. The Federal Tribunal currently admits that all fundamental rights have an intangible core.[21] However, it has not so far defined the intangible core of each right.[22]

72. Restrictions on fundamental rights which do not meet the four conditions mentioned above must in principle be declared null and void or not be implemented. If they give rise to prejudice to individuals, the public authorities incur liability (on account of an illicit act). Restrictions which do meet the four conditions are valid. However, some of them (for example, expropriations) may give rise to liability on the part of the public authorities (on account of an illicit act).[23]

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[19] See ATF 97 Ia 508, cons. 5c.

[20] See ATF 117 Ia 483; 119 Ia 353.

[21] See ATF Ia 418; 104 Ia 487; 105 Ia 140.

[22] See J.P. Müller in *Commentaire de la Constitution fédérale. Introduction aux droits fondamentaux*, Nos. 180 ff.

[23] See article 22 *ter*, paragraph 3, of the Constitution.

V. ARTICLE 5: PROHIBITION OF THE ABUSE OF RIGHTS AND PRIMACY OF THE MOST FAVOURABLE RIGHT

73. The prohibition of the abuse of rights is an interpretative clause which mirrors article 5 of the International Covenant on Civil and Political Rights and article 17 of the European Convention on Human Rights. It prohibits abuses in the exercise of the rights recognized by the Covenant, whether by an individual or by a public authority. In the Swiss legal order it is reflected in a general principle set out, for example, in article 2 of the Civil Code; it is taken into account by the courts when they rule on claims seeking to bring rights into opposition in order to hinder their application.

74. In Switzerland, the silence of a treaty has no *a contrario* effect on the express provisions of legislation or international conventions. The case-law of the Federal Tribunal concerning the European Convention on Human Rights indicates that the Convention has autonomous scope only when it affords more protection to a right than the domestic legal system. In such a case, less favourable domestic legislation may not be invoked against it. This principle also applies to the provisions of this Covenant to the extent that they are directly applicable.

VI. ARTICLE 6: THE RIGHT TO WORK

A. Principal instruments applicable

75. The following are the principal instruments applicable:

(a) International instruments:

ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified in 1962;

ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), ratified in 1990;

(b) National instruments:

Federal Constitution, articles 34 *ter* and 34 *novies*;

Loi fédérale concernant le travail dans l'industrie, l'artisanat et le commerce (Federal Act concerning work in industry, handicrafts and commerce), Loi sur le travail (Labour Act) (LTr), dated 13 March 1964;

Loi sur la formation professionnelle (Vocational Training Act) (LFPr), dated 19 April 1978;

Loi fédérale sur le service de l'emploi et la location de services (Federal Act concerning the employment service and the hire of services), dated 6 October 1989;

Loi fédérale sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité (Federal Act concerning compulsory unemployment insurance and indemnities in the event of insolvency) (LACI), dated 25 June 1982;

Ordonnance limitant le nombre des étrangers (Order restricting the number of aliens) (OLE), dated 6 October 1986.

B. General

76. The right to work is not guaranteed as such in the Swiss legal order. Three popular initiatives for its inclusion in the Constitution were rejected by popular vote in 1894, 1946 and 1947 respectively. The 1943 initiative, relating to "economic reform and labour rights", sought in particular to secure a guarantee of "the right to work and to a fair remuneration for work". This initiative was rejected by a large majority. However, the right to work is guaranteed in certain cantonal constitutions, in particular as an objective of social policy.[24]

77. Although the Constitution does not establish a right to work, it contains a number of provisions confirming the social character of the federal State. For example, one of the goals of the Confederation is the promotion of the common prosperity (Constitution, art. 2). In particular, article 31 *bis* of the Constitution requires the Confederation to safeguard the general welfare and procure economic security for the citizens. The Confederation is also required to take "measures of a nature to prevent economic crises" (Constitution,

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[24] Canton of Solothurn, article 22, paragraph (d) (social objectives); Constitution of the Canton of Basel-Country, paragraph 17, subparagraphs (b) and (c); Constitution of the Canton of the Jura, article 19 (right to work); Constitution of the Canton of Bern, article 30 (a) (social objectives).

art. 31 *quinquies*). This provision is a recognition that one of the tasks of the State is to combat unemployment and to promote full employment.

78. The principal aim of Switzerland's economic policy is to maintain general conditions favouring enterprises and of a nature to stimulate the creation of productive employment. This objective can be attained by the adaptation to present-day needs of a large number of State regulations affecting market conditions. To that end the revitalization programme launched by the Federal Council in 1993 includes greater freedom of access to public contracts, a stiffening of the legislation on cartels and a gradual liberalization of the regulations governing aliens. It is also intended to abolish the procedure of State authorization and contribute to the growth of knowledge by the creation of specialized institutes of higher education. The bilateral negotiations with the European Union and the ratification of the GATT/WTO agreements should also help to improve access to international markets and thus increase the attractiveness of Switzerland as a centre for economic activity.

79. The cantons have also made considerable efforts in the field of economic policy. Mention should also be made here of the regional policy, which is designed to ensure that all the different regions enjoy an equitable share of economic development. The principal element of regional policy is the Federal Act on investment aid for mountain regions (LIM), dated 28 June 1974. This Act is primarily concerned with aid for the development of infrastructures, and particularly basic infrastructures. To receive aid under the Act, communes must associate in regions and draw up a development plan. Today there are 54 mountain regions in Switzerland; their boundaries are defined in accordance with the LIM and they are recognized by the Confederation. Since the investment aid scheme came into operation, it has been able to support over 5,000 infrastructure projects in these 54 regions. The Act has also enabled improvements to be made in the living conditions of the population and has thus helped to check the population drift away from the mountain regions. The LIM is to be revised shortly.

80. The other instruments of regional policy include in particular the Federal Decree of 17 June 1994 introducing financial assistance for regions whose economies are threatened. This decree primarily concerns regions which have suffered particularly severely from unemployment and redundancies. The Confederation has also introduced a programme of assistance for rural areas known as "Regio Plus". As regards the larger regions, the Confederation has also undertaken to participate in cross-boundary cooperation within the framework of the community initiative known as Interreg II.

C. The labour market situation

81. For many years the labour market situation in Switzerland was one of full employment. However, since 1990 the Swiss economy has entered a recessionary phase which, unlike previous recessions (1974-1976 and 1981-1982), has been accompanied by large-scale increases in unemployment. Thus the unemployment rate increased from 0.5 per cent in 1989 to 2.5 per cent in 1992 and 4.7 per cent (171,000 unemployed persons) in 1994. Between 1990 and 1994 the number of economically active persons in employment fell by 250,000. Since the second half of 1993 the employment market in Switzerland has improved slightly; the numbers of persons registering as job-seekers have fallen and partial unemployment has decreased. This improvement should continue. It is estimated that the unemployment rate should be 4 per cent by 1995.

82. Table 1 shows the principal features of unemployment in Switzerland. French-speaking Switzerland and Ticino are more severely affected than German-speaking Switzerland. The unemployment rate among aliens is twice as high as that among Swiss nationals. This difference is due, first of all, to the fact that the supply of foreign labour has grown faster than that of Swiss labour (increases of 110,000 and 45,000 workers respectively between 1990 and 1993). In addition, the foreign workers are often relatively unskilled, and it is precisely workers with low skill levels who are the first to be affected by unemployment (nearly 39 per cent of unemployed persons are totally unskilled).

Table 1. Level and structure of recent unemployment, 1990-1994 (first quarter)

	1990		1991		1992		1993		1994 First quarter	
	Number	Rate	Number	Rate	Number	Rate	Number	Rate	Number	Rate
Total	18 133	0.5	39 222	1.1	92 308	2.5	163 135	4.5	185 895	5.1
According to region:										
German-speaking	8 365	0.3	18 889	0.7	51 565	2.0	96 959	3.7	109 466	4.2
French- and Italian-speaking	9 768	1.0	20 333	2.0	40 743	4.0	66 176	6.5	76 429	7.6
According to sex:										
Women	8 306	0.6	16 507	1.2	37 591	2.7	66 571	4.7	75 845	5.4
Men	9 827	0.4	22 715	1.0	54 717	2.5	96 564	4.4	110 050	5.0
According to citizenship:										
Swiss	10 525	0.4	22 370	0.8	55 636	2.0	99 631	3.5	111 780	4.0
Foreign	7 608	0.9	16 852	2.1	36 672	4.5	63 504	7.8	74 115	9.1
According to age:										
15-24 years	2 887	0.4	7 377	1.1	19 883	3.0	32 098	4.8	32 533	4.9
25-49 years	11 676	0.5	25 613	1.2	58 480	2.7	103 459	4.8	118 642	5.5
50 years and more	3 570	0.5	6 232	0.8	13 945	1.8	27 578	3.5	34 720	4.4
According to sectors:										
Agriculture	159	0.1	317	0.2	827	0.4	1 522	0.8	2 024	1.1
Energy, mining	26	0.1	83	0.3	234	0.9	448	1.8	560	2.3
Arts and crafts, industry	4 371	0.5	10 408	1.2	24 623	3.0	40 916	5.1	44 773	5.8
Construction	1 331	0.4	3 510	1.1	9 504	3.0	17 441	5.8	20 747	7.1
Distributive trade, catering, repairs	5 313	0.6	10 604	1.3	24 154	3.0	42 437	5.5	49 336	6.5
Transport and communication	558	0.3	1 288	0.6	3 089	1.4	5 183	2.4	5 845	2.8
Banking, insurance, consultancy	2 452	0.6	6 068	1.4	13 370	3.1	20 970	4.9	22 605	5.3
Other services	2 866	0.6	4 986	0.9	11 624	2.2	18 827	3.6	22 035	4.2
Government	523	0.4	918	0.7	2 321	1.7	3 784	2.8	4 428	3.3
Not specified	534	-	1 042	-	2 562	-	11 607	-	13 542	-
Total	18 133	0.5	39 222	1.1	92 308	2.6	163 135	4.8	185 895	5.6
		Share in %		Share in %		Share in %		Share in %		Share in %
According to duration:										
0-6 months	13 860	76.4	30 245	77.1	60 633	65.7	85 346	52.3	85 628	46.1
7-12 months	3 085	17.0	7 255	18.5	23 636	25.6	48 939	30.0	53 030	28.5
More than 1 year	1 188	6.6	1 722	4.4	8 039	8.7	28 850	17.7	47 237	25.4
According to function:										
Specialists	8 038	44.3	17 147	43.7	43 764	47.4	80 132	49.1	91 355	49.1
Auxiliaries	8 625	47.6	18 761	47.8	39 170	42.4	64 327	39.4	72 080	38.8
Apprentices/students	443	2.4	1 173	3.0	4 449	4.8	9 936	6.1	12 294	6.6
Other	1 027	5.7	2 141	5.5	4 925	5.4	8 740	5.4	10 166	5.5

Source: OECD Economic Surveys: 1993-1994, Switzerland, OECD, 1994.

83. The unemployment rate among women is slightly higher than that among men; but the gap is narrowing. The relative stability of the numbers of women in active employment is due to the increase in the numbers of part-time jobs, of which women are the principal beneficiaries. The rate of youth unemployment, which had risen more sharply, is now in line with the general unemployment rate. In addition, the duration of unemployment among young people is below the average because they find jobs faster.

84. Unemployment has increased in every sector of activity; but the increases have been disproportionately large in industry and the building sector, and also in commerce and the consultancy sector.

85. The proportion of long-term unemployed (persons unemployed for more than one year) in the total has risen considerably, from 4.4 per cent in 1991 to 25.4 per cent during the first quarter of 1994. Some of the long-term unemployed have exhausted their entitlements to benefit. According to the Swiss survey of the economically active population conducted by the Federal Statistical Office, the maximum number of unemployed persons who have exhausted their entitlements has remained steady since 1991 at about 50,000. During 1994, 30 per cent of the members of this group were still registered at a labour office; 20 per cent had found jobs; and the remaining 50 per cent were in a variety of situations; some had resumed gainful activity, others were still looking for work without going through a labour office, yet others had withdrawn from the employment market and had given up the search for a job, while others still had undertaken vocational retraining or advanced training. In some cantons the social protection of unemployed persons who have exhausted their entitlements is ensured by cantonal legislation on unemployment assistance. The cantons of Ticino and Geneva have established a minimum assistance scheme for unemployed persons who have exhausted their entitlements.[25] In conclusion, it must be emphasized here that exhaustion of benefit entitlements is a factor which makes for exclusion and gives rise to transfers of the unemployed persons concerned from the responsibility of the labour market authorities to the competent social bodies and from that of the Confederation to that of the cantons and the communes.

D. Employment promotion measures

86. On this point, too, reference is made to the reports submitted to the ILO bodies concerned with the application of the Employment Promotion and Protection against Unemployment Convention (No. 168).

1. Active measures to promote reintegration of the unemployed

87. The 1982 Act concerning unemployment insurance (LACI) seeks to promote the further training and occupational integration of individuals who are difficult to place in order to improve their suitability for employment. In this respect measures designed to influence the labour market form a key element in labour market policy; the latter has been further strengthened by the second revision of the LACI, dated 23 June 1995. The different measures taken are designed to promote the speedy return of unemployed persons to economically active life.

(a) Courses (LACI, arts. 59 to 64)

88. Under the measures designed to assist vocational retraining and integration or reskilling, insured persons who are difficult to place are able to attend courses specific to a particular occupation or speciality, or personality-based courses, to broaden their knowledge and thus improve their chances in the labour market. The Unemployment Insurance Fund reimburses necessary expenditure incurred on course attendance and course material, on travel between the home and the training centre and, where appropriate, the cost of board and

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[25] See below (art. 11).

lodging during the course. A certain number of principles have become established with experience. A course must not exceed one year in duration; it may take place in the daytime or the evening; it may be full-time or take up only a few hours each week; it must in principle be conducted in Switzerland; and there is no ceiling on course expenditure, save that the latter must be proportionate to the objectives set and that, if an equivalent course is available at less cost, it must be selected. Basic training and further training of a general character are not covered by the scheme.

89. Since nearly 39 per cent of unemployed persons have low skill levels, these courses are of considerable importance. In 1993, 38,000 job-seekers attended courses of this kind; in 1994 the number was 45,000.

(b) Employment initiation allowances (LACI, arts. 65 to 67)

90. This measure is designed for unemployed persons for whom it is difficult to find work on account of advanced age, physical or mental handicaps or poor career histories. It seeks to encourage employers to engage unemployed persons whose skill profiles do not correspond exactly to the requirements of the vacancy to be filled and who will require on-the-job training within the enterprise. During the period of initiation the unemployment insurance scheme covers the difference between the actual remuneration and the normal remuneration for up to 6 months, and in certain exceptional cases (older workers) up to 12 months. These allowances are payable to insured persons who fulfil the contribution conditions or are exempted therefrom, when the remuneration offered corresponds at least to the work performed and when the insured person can expect to be engaged after the induction period.

91. The number of unemployed persons receiving allowances of this kind increased from 1,700 in 1993 to 3,200 in 1994.

(c) Temporary employment programmes (LACI, arts. 72 to 74)

92. Temporary employment programmes are designed primarily for unemployed persons who have been seeking work for a considerable period. These programmes offer them opportunities to work, thus enabling them to retain their occupational and social skills as well as their self-confidence. These programmes offer jobs in the administrative, craft and technical branches and in non-profit-making institutions.

93. In 1994 employment programmes of this kind provided temporary jobs for 13,000 unemployed persons.

(d) Employment outside the area of residence (LACI, arts. 68 to 71)

94. The unemployment insurance scheme encourages unemployed persons who have not been able to find employment in the areas where they are resident to accept employment in other areas. It pays the insured person a contribution towards his commuting costs or, if he only returns home at weekends, a contribution towards his board and lodging expenses. To be entitled to these benefits an insured person must fulfil the contribution conditions or be exempted therefrom and must suffer financial loss as a result of the new employment.

(e) Training periods in enterprises

95. The LACI makes no provision for training periods of this kind; they have been organized within the framework of a pilot project designed specially for young persons on completion of their apprenticeship. They may be performed in an administration or a private enterprise; they may not exceed six months in duration. Since the autumn of 1993 some 3,500 young persons have benefited from the scheme. As the results of this pilot project have been extremely positive, a legal basis for it has been established in the revised version of the LACI.

(f) Active measures provided for under the second revision of the LACI (see art. 9)

96. The second revision of the LACI, dated 23 June 1995, enhances the importance of active measures for the reintegration of the unemployed. The thinking behind this revision focuses on the reintegration of the unemployed through participation in active measures rather than on guaranteeing them an income. The schemes already in existence (described above) are complemented by training allowances and schemes designed to promote self-employed activity and early retirement. The revised text of the LACI establishes a linkage between the right to benefit and participation in reintegration schemes. Thus the "normal" entitlement is to be reduced to 150 daily allowances; additional "special" allowances will be paid only on condition that the insured persons participate in active schemes. These may be further training, reskilling or temporary occupation programmes. Responsibility for organizing these programmes lies with the cantons. Fuller information on the new Act on unemployment insurance will be provided in the next periodic reports.

Table 2. LACI active schemes: numbers of beneficiaries and participants, 1990-1994

Scheme	1990	1991	1992	1993	1994
Persons receiving daily allowances for course attendance	4 800	9 300	31 000	38 500	45 000
Participants in group courses	350	300	4 500	-	-
Participants in temporary occupation programmes	1 350	1 600	3 200	9 000	13 000
Persons inducted into new types of job	340	470	1 100	1 770	3 200
Total	6 840	11 670	39 800	49 270	61 200

Source: OFIAMT.

2. Reform of the public employment service

97. In Switzerland employment service is provided by public and private agencies operating in parallel; the State has no monopoly in this field. Parallel operation implies complementarity and mutual cooperation between the two systems. However, private services predominate.

98. Switzerland has approximately 2,000 employment agencies. These agencies require cantonal and federal authorization to operate. Their activities consist mainly of bringing employers and job-seekers together so that they can conclude employment contracts. There is one employment agency for approximately every 1,800 members of the population. Private placement agencies have a greater overall workload than the public services; in 1991 they completed almost four times as many placement operations as the public services.

99. The public employment service consists of 26 cantonal labour offices and 3,000 municipal offices with responsibilities for placement. The substantial increase in the numbers of the unemployed has meant that the cantonal labour offices are no longer able to cope satisfactorily with their placement responsibilities. The principal causes of this deficiency are, first, an excessive number of cases per counsellor (approximately 200 job-seekers per placer/counsellor) and secondly the increase in the amount of time spent on administrative tasks (registration, removal from register, verifications). The second revision of the LACI has given the proposals to reform the public employment services, which are designed to improve the efficiency of the labour offices, a basis in law.

100. This reform comprises the following elements:

(a) A reduction in the administrative tasks of referrals officers/counsellors, an increase in their number (to reach a ratio of 140 cases per counsellor) and an improvement of standards among referral officers (preparation of a federal diploma in personnel counselling);

(b) The regionalization of placement and counselling services; many small municipal offices are unable to carry out efficiently the numerous tasks relating to placement. Thus regionalization is designed to create offices of a reasonable size able to guarantee occupational placement in a manner appropriate to the employment market situation. Pilot regionalization projects are in course of implementation in the cantons of Vaud and Solothurn, which have created regional employment offices;

(c) Promotion of the establishment of inter-institutional centres. Here the intention is to promote close cooperation between the bodies respectively responsible for placement, vocational training, vocational guidance and, where appropriate, social assistance;

(d) Cooperation between public and private employment services; cooperation with private services may be valuable if the public employment service is no longer able to cope with its workload or has insufficient information on particular segments of the labour market;

(e) Better integration of employers in the placement and counselling process. The aim here is to improve contacts with employers so that the latter will report vacancies to labour offices. The reporting procedure should be as simple as possible;

(f) Development of the necessary technical resources. Since 1993 an information system covering placement and labour market statistics (LPASTA) has been established. Today 120 labour offices are linked to it. To obtain optimum functioning from the system, all the offices should be linked to it.

3. Free choice of employment

101. The principle of freedom of contract set forth in the Code of Obligations includes the freedom to choose the other party to an employment contract. Thus a worker is free to choose the place of his employment; but the national legislation currently in force does not give him any right to be engaged.

102. Within the context of the campaign against unemployment, a job-seeker is obliged to accept any "suitable job" offered to him (LACI, art. 16). A job is deemed to be suitable where:

(a) It conforms to local practice in the occupation, and in particular complies with the terms of collective agreements or standard employment contracts;

(b) It is reasonable having regard to the unemployed person's capabilities and, as far as possible, to his previous work experience;

(c) It is consistent with the unemployed person's age, personal circumstances and state of health;

(d) It provides the unemployed person with a remuneration at least equal to the unemployment benefit to which he is entitled.

103. However, under the terms of the revised text of the Act on unemployment insurance, the concept of "suitable job" has been broadened.

4. Vocational training and guidance

104. Vocational guidance is governed by articles 2 to 5 of the Act concerning vocational training (LFPr), which is applicable to all occupations, even those not subject to legislation. The Act is confined to the setting of principles; it does not regulate guidance in detail. Article 2 states that vocational guidance "shall be at the service of young persons and adults to help them choose their occupations and studies and to provide them with information on the career of their choice". It is optional and free of charge. Its organization is the responsibility of the cantons, which are required to set up cantonal guidance centres. The Confederation grants subsidies to these establishments which cover between 30 and 50 per cent of their expenditure, according to the financial abilities of the cantons.

105. The importance of vocational training in sustaining the growth and competitiveness of the economy is widely recognized. In Switzerland vocational training is of considerable importance; 70 per cent of young persons completing their compulsory schooling opt for training of this kind.

106. The 1978 Federal Act on vocational training only covers industry, arts and crafts, commerce and domestic service. The remaining fields are covered by special legislation. The vocational training system as a whole is described in detail in the chapter on article 13, relating to education.

107. The principal form of vocational training is that of apprenticeship in an enterprise; 75 per cent of young persons in training are apprenticed, the task of training the apprentice being shared between the enterprise and the schools. The practical part of the training is imparted in the enterprise by the apprentice-master and consists mainly of participation in the day-to-day work of the enterprise. Theoretical knowledge is imparted by the vocational school on one or two days each week. In a considerable number of occupations this system is complemented by induction courses and thus becomes a "trial" system. After three or four years of training the apprentice takes a trade test which enables him to obtain a federal certificate of capacity. This certification enables him to take up employment as a skilled worker immediately.

108. This vocational training may be supplemented by more advanced training either in higher vocational training institutions or by a higher-level trade test.

109. Reforms are currently being undertaken with a view to enhancing the value of vocational training. The first reform undertaken to this end was the creation of the vocational upper secondary school level leaving certificate (*maturité professionelle*) in 1993. This reform is to be completed by the draft law on specialist institutes of higher education. The draft provides for the establishment of schools offering high-level vocational training. They will be at university level but will be of a different nature, as their teaching will be mainly practically-oriented. They will be open to holders of a *maturité professionelle*. Further details concerning these higher-level specialist schools will be found in the comments relating to article 13.

E. The labour market and vulnerable groups

1. Situation of aliens on the labour market

110. According to the 1994 Swiss survey of the economically active population, there were, during the second quarter of 1994, 742,000 aliens established in Switzerland or holding one-year permits of sojourn (*autorisations de séjour*) and working in Switzerland; they thus made up 20 per cent of all economically active persons in employment. On 31 December 1994 there were in all 1.3 million aliens, or 18.6 per cent of the total population, permanently resident in Switzerland.

Outline of the regulations governing aliens in Switzerland

111. The foundation of Switzerland's current policy towards aliens consists of the Federal Act of 26 March 1931 on the residence and establishment of aliens (LSEE) together with the Order of 6 October 1986 restricting the number of aliens (OLE). The latter instrument is designed primarily to ensure a balanced relationship between the numbers of Swiss nationals and of resident aliens in the population, to create conditions conducive to the integration of alien workers and residents, to improve the structure of the labour market and to achieve optimum balance in the area of employment.

112. To avoid as far as possible imbalances in the labour market, the number of new permits of sojourn valid for more than four months is restricted by quotas fixed annually for each category of sojourn.

113. An alien wishing to take up employment in Switzerland may obtain a work or residence permit when the employer has not found a suitable candidate on the domestic labour market and provided that he respects the working and remuneration conditions customary in the locality and the occupation concerned. At present admission to the Swiss labour market is relatively easy to obtain, as the conditions for admission have been relaxed and in recent years the quotas have not been fully taken up. A foreign enterprise establishing itself in Switzerland can obtain the permits necessary for the engagement or the transfer of managers, supervisory staff and essential foreign specialists.

114. Distinctions are made between the different categories of sojourn as follows:

(a) **The establishment permit**, which is granted to nationals of most European States, on the basis of bilateral agreements, after 5 years' residence in Switzerland, and to other aliens after 10 years. Holders of establishment permits enjoy the same status as Swiss nationals in the labour market;

(b) **One-year permits** are granted in respect of long stays; they are granted for one year and are renewable annually. Specialists on temporary transfer can obtain permits of up to four year in validity;

(c) **Short-term permits** allow a sojourn not exceeding 18 months in duration and are granted for purposes of advanced vocational training or for activities of a limited duration;

(d) **A seasonal permit** authorizes residence in Switzerland for purposes of employment in a seasonal branch for not more than 9 months in any one year. The holder of a seasonal permit who has resided in Switzerland as a seasonal worker for a total of 36 months during four consecutive years may apply to have his seasonal permit converted into a one-year permit provided that he has a job;

(e) **A border permit** (not included in quotas) allows a national of a neighbouring country who has been resident for at least six months in the border zone to enter the Swiss border zone and work there; but he is required to return to his home every day.

115. Holders of one-year permits and border workers enjoy occupational and geographical mobility with effect from the first year. Holders of short-term or seasonal permits are in principle not allowed to move from one job, occupation or canton to another.

116. The holder of a one-year permit may immediately be joined by his or her spouse and their unmarried children under age 18[26] if their sojourn and gainful activity appear sufficiently secure. Holders of other

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[26] Under bilateral arrangements the maximum age is 20 years for Italian, Spanish and Portuguese nationals.

categories of permits of sojourn cannot as a rule be joined by their families. Permits granted to family members are not counted against the quota.

117. The report of the Federal Council dated 15 May 1991 on policy towards aliens and refugees sets out the main lines of Switzerland's new policy regarding foreign labour, which is based on a model known as the "three concentric circles model". For nationals of States in the innermost circle (nationals of the European Union and the European Free Trade Area (EFTA)), a process of progressive liberalization of the movement of individuals is being introduced. The median circle comprises countries which are not members of either the EU or the EFTA but with which Switzerland has special relationships (United States, Canada). The restrictive policy is maintained; but administrative simplifications and an improvement of legal status should be possible. Nationals of countries in the outermost circle (all other countries) may only be recruited on an exceptional basis within the framework of a restrictive policy (this practice may be relaxed for highly qualified specialists wishing to sojourn in Switzerland for a number of years provided that the term is limited).

Conditions governing employment

118. The Order restricting the number of aliens makes the granting of permits of sojourn and gainful activity subject to the condition that the employer grants the alien worker the same conditions of work and remuneration as are customarily granted to Swiss workers in the locality and the occupation concerned (OLE, art. 9, para. 1). For purposes of determining remuneration and working conditions, the second paragraph of the same article refers to the remuneration and conditions granted for similar work in the same enterprise and the same branch and also to collective agreements[27] and standard employment contracts.

119. In 1990 the Federal Tribunal ruled that, subject to any restrictions based on aliens' police regulations, an alien could take advantage of the freedom of trade and industry guaranteed in article 31 of the Constitution.[28] This means that an alien who has gained admission to the labour market may only be subject to restrictions on his economic freedom based on law, justified by a public interest and proportionate to the case.

2. Situation of women in the labour market

120. Article 4, paragraph 2, of the Federal Constitution guarantees equality before the law for men and women and stipulates that "the law provides for equality, in particular in the areas of the family, education and work".

121. In practice, however, segregation between men's and women's work is a feature of the labour market. It might be said that there is a masculine structure of employment (characterized by homogeneity) and a feminine employment structure (characterized by heterogeneity).

122. A number of legislative measures, designed to ensure that the equality provided for by law exists in practice, are under consideration. The revision of the Labour Act which is currently taking place seeks to achieve equality between men and women as regards work and rest periods and to translate into internal law the denunciation of ILO Convention No. 89 prohibiting the night work of women.[29] The Act concerning equality between men and women was adopted by the legislature on 24 March 1995. This Act seeks in particular to prohibit all discrimination based on sex in the area of employment, including that of access to employment.

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[27] On the concept of the collective labour agreement see under arts. 7 and 8.

[28] ATF 116 Ia 237.

[29] ILO Convention No. 89 was denounced by the Federal Council on 24 February 1992.

Participation of women in economic activity

123. Women make up 43 per cent of the economically active population (37.5 per cent in 1990[30]); 54.8 per cent of women are engaged in gainful activity. This is a relatively high percentage; but it must be qualified by the fact that far more women than men (52 per cent of economically active women) work part-time. In addition, the economic activity among women is not continuous; many women stop working after reaching age 24 and resume occupational activity after reaching age 40.

Modalities of employment

124. Part-time work is definitely a specific feature of economic activity among women; over half of all women engaging in gainful activity work part-time, and 84 per cent of part-time jobs are held by women. The family situation has a direct influence on working time; 68.5 per cent of women without children work full-time, whereas 77 per cent of women with children under age 14 are working part-time. The amount of work done also depends on the age of the youngest child; the numbers of hours worked by women increases in parallel with the age of the children.

125. The modalities of women's employment are frequently marked by atypical or precarious working conditions, that is to say, conditions differing from those prevailing in normal activities as regards scheduling, working hours and types of employment contracts: one out of every five women (22.1 per cent) is working as a family help, engaged in home work or casual employment, working in another private household or employed on a minimal basis (less than six hours per week).

Occupational situation

126. Men and women do not have the same types of jobs, from the standpoint of the occupation engaged in, the branch concerned or the position occupied in the occupational hierarchy. There is a clear predominance of women in service occupations (health, education, restaurants and retail sales). On the other hand, they are highly under-represented in technical and scientific occupations. The occupations in which women are well represented reflect the traditional role of women in society and are frequently less prestigious than those where men predominate.

127. As regards the occupational hierarchy, only 12 per cent of women (as against 24 per cent of men) belong to the three highest categories: "managerial and liberal professions", "self-employed" and "professional and supervisory". On the other hand, many women fall within the categories "employees without common responsibilities" and "unskilled workers". The two sexes are fairly equally represented in the intermediate groups.

128. Reference is also made to the reports submitted by Switzerland to the ILO bodies on the application of the Discrimination (Employment and Occupation) Convention (No. 111).

3. Situation of handicapped persons

129. In Switzerland there is no statutory quota system requiring private or public employers to engage a certain percentage of handicapped workers.

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[30] The figure for 1990 is taken from the population census; that for 1994 is derived from the Swiss survey of the economically active population.

130. The Disability Insurance Act, dated 19 June 1959, provides for a number of measures concerning the vocational rehabilitation and employment of handicapped workers. These measures include vocational guidance, basic vocational training, retraining for new occupations and placement services. In addition, the Act on vocational training provides for adjustments in apprenticeship schemes to assist apprentices.

131. There is a comprehensive network of public vocational guidance and placement offices for the handicapped. These offices work closely together with the labour offices and the unemployment insurance funds to improve the chances of handicapped workers in the labour market.

132. The integration of handicapped persons in the world of work is effected mainly through special institutions known as "sheltered workshops", which are able to offer employment suited to the aptitudes of handicapped workers. These workshops are privately owned and receive subsidies from the public authorities (principally the disability insurance scheme, the Confederation and the cantons). There are at present 300 sheltered workshops offering employment to nearly 20,000 persons suffering from serious disabilities. They produce goods worth about 150 million francs. The present economic situation does not affect sheltered workshops directly inasmuch as they are subsidized by the public authorities, but it is having certain negative effects, such as loss of customers and a decline in orders.

133. Reference is also made to the reports submitted by Switzerland to the ILO bodies concerned with the application of the Vocational Rehabilitation and Employment of Handicapped Persons Convention (No. 159).

VII. ARTICLE 7: RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. Principal instruments applicable

134. The principal instruments applicable are:

(a) International instruments:[31]

ILO Equal Remuneration Convention, 1951 (No. 100), ratified in 1972;

ILO Labour Inspection Convention, 1947 (No. 81), ratified in 1949;

ILO Weekly Rest (Industry) Convention, 1921 (No. 14), ratified in 1935;

ILO Holidays with Pay (Revised) Convention, 1970 (No. 132), ratified in 1991;

(b) National instruments:

(i) Equality of remuneration and of opportunities for promotion:

Federal Constitution, article 4, second paragraph;

Loi fédérale sur l'égalité entre hommes et femmes (Federal Act concerning equality between men and women) (LEg), dated 24 March 1995;

Arrêté fédéral du 23 mars 1990 relatif à des mesures spéciales en faveur de la formation continue au niveau universitaire (Federal Decree concerning special measures to promote continuing training at university level, dated 23 March 1990);

Instructions concernant l'amélioration de la représentation de la situation professionelle du personnel féminin de l'administration générale de la Confédération (Instructions concerning improvement of representativeness in the occupational position of female employees in the general administrative services of the Confederation), dated 18 December 1991;

(ii) Health:

Loi fédérale sur le travail dans l'industrie, l'artisanat et le commerce (Loi sur le travail) (LTr) (Federal Act concerning work in industry, handicrafts and commerce (Labour Act)), dated 13 March 1964, articles 6-8;

Ordonnance 1 concernant la loi sur le travail (OLT1) (Order No. 1 concerning the Labour Act), dated 14 January 1966;

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[31] See also various technical ILO conventions (Conventions Nos. 62, 115, 120, 136, 139) ratified by Switzerland.

Ordonnance 2 concernant l'exécution de la loi sur le travail (Dispositions spéciales pour certaines catégories d'entreprises ou de travailleurs) (OLT2) (Order No. 2 concerning implementation of the Labour Act: special provisions concerning certain categories of enterprises or workers), dated 14 January 1966;

Ordonnance 3 relative à la loi sur le travail (hygiène) (OLT3) (Order No. 3 concerning the Labour Act: health), dated 18 August 1993;

Ordonnance 4 relative à la loi sur le travail (approbation des plans) (OLT4) (Order No. 4 concerning the Labour Act: approval of plans), dated 18 August 1993;

Code des obligations (Code of Obligations) (CO), dated 30 March 1911, art. 328;

(iii) Safety:

Loi fédérale sur l'assurance-accidents (LAA) (Federal Act concerning accident insurance), dated 20 March 1981;

Loi fédérale sur la sécurité d'installations et d'appareils techniques (Federal Act concerning safety of technical plant and apparatus), dated 19 March 1976;

Ordonnance sur la prévention des accidents et des maladies professionnelles (OPA) (Order concerning prevention of accidents and occupational diseases), dated 19 December 1983;

Ordonnance 4 relative à la loi sur le travail (OLT4) (Order No. 4 concerning the Labour Act), dated 18 August 1993;

Code des obligations (Code of Obligations) (CO), dated 30 March 1911, article 328;

(iv) Hours of work and rest periods:

Loi sur le travail (LTr) (Labour Act), dated 13 March 1964, arts. 9-28.

Ordonnance 1 concernant la loi sur le travail (OLT1) (Order No. 1 concerning the Labour Act), dated 14 January 1966;

Ordonnance 2 concernant l'exécution de la loi sur le travail (Dispositions spéciales pour certaines catégories d'entreprises ou de travailleurs) (OLT2) (Order No. 2 concerning implementation of the Labour Act: special provisions concerning certain categories of enterprises or workers), dated 14 January 1966;

Arrêté fédéral concernant l'initiative populaire fédérale "pour un jour de fête nationale férié (Initiative '1er août')" (Federal Decree concerning the federal popular initiative "For a paid national holiday ('1 August initiative')", dated 18 June 1993;

Code des obligations (CO) (Code of Obligations), dated 30 March 1911, articles 329 ff.

B. Minimum wage and equal remuneration for men and women

1. Minimum wage

135. The principle of the minimum wage is unknown in Swiss legislation. The basis of the Swiss legislation on the subject is the principle of freedom of contract; and the wage is fixed freely between the parties, who are not constrained by any minimum amount, save where a collective labour agreement contains a clause on the subject. Collective agreements may in fact contain what are known as standard clauses, covering all matters likely to be referred to in individual employment contracts (such as hours of work, holidays, pay, etc.). These standard clauses, which are directly and imperatively applicable to any employment contract concluded between employers and workers bound by the agreement, frequently set levels of remuneration. An inquiry involving 1.1 million workers covered by 39 collective agreements revealed that only 27.1 per cent of the latter contained no remuneration clauses; the others contained provisions governing either remuneration under the agreement (25 per cent), actual remuneration (8.9 per cent) or both (38.4 per cent).[32]

136. Although the concept of the minimum wage is unknown in Swiss law, there are a number of arrangements resembling minimum wage provisions. Under legislation dating from 28 September 1956 the scope of a collective agreement may, at the request of the contracting parties, be extended to all employers and workers in the branch or occupation concerned.[33] This procedure is applied in particular to clauses in agreements relating to minimum wages. In addition, Swiss legislation concerning alien workers contains regulations indirectly fixing minimum wages for aliens. The Order restricting the number of aliens (OLE), dated 6 October 1986, makes the granting of permits of sojourn and gainful activity subject to the condition that the employer grants the alien worker the same conditions of work and remuneration as are customarily granted to Swiss workers in the locality and the occupation concerned (art. 9, para. 1). For purposes of determining remuneration and working conditions, the second paragraph of the same article refers to the remuneration and conditions granted for similar work in the same enterprise and the same branch and also to collective agreements and standard employment contracts.

137. Within the federal public service the Act concerning the status of public servants lays down salary scales which fix a minimum and a maximum salary for each salary category. Salary scales are also valid in a number of cantons. The choice of a salary class depends on the training required, the scale of the workload and the requirements and responsibilities attaching to the post. The starting salary is generally the lowest step on the scale for the salary class to which the post belongs. However, special circumstances, such as study, aptitudes or special knowledge, may justify a different salary level. The starting salary may not be less than the minimum where the beneficiary has not reached age 20.

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[32] *Accords salariaux conclus pour 1994 dans les domaines couverts pan une CCT* (Wage agreements concluded for 1994 in the fields covered by collective labour agreements). Vie économique, 6/94.

[33] On the subject of the extension of the scope of collective agreements see below under article 8.

Table 3. Average remuneration for all sectors of the economy, 1993

Adult employees	**Average monthly wage (in francs)**
All	4 898
Men	5 298
Women	3 768
Salaried employees	**Average monthly wage (in francs)**
All salaried employees	5 573
Male salaried employees	6 250
Category 1	7 159
Commercial employees	7 520
Technical employees	7 183
Salespeople	5 340
Category 2	5 443
Commercial employees	5 272
Technical employees	5 886
Salespeople	4 111
Category 3	4 715
Female salaried employees	4 299
Category 1	5 235
Commercial employees	5 755
Technical employees	5 905
Salespeople	3 982
Category 2	4 082
Commercial employees	4 513
Technical employees	4 259
Salespeople	3 185
Category 3	3 690
Adult manual workers	**Average hourly wage (in francs)**
All manual workers	24.41
Male manual workers	26.17
Skilled	28.14
Semi-skilled and unskilled	24.56
Female manual workers	17.42
Skilled	18.92
Semi-skilled and unskilled	16.77

Source: OFIAMT, *Enquête sur les salaires versés en octobre 1993* (Survey of wages and salaries paid in October 1993).

2. Equality of remuneration between men and women

138. Since 1981 equality of remuneration between men and women has been guaranteed by article 4, paragraph 2, of the Federal Constitution. The last sentence of this paragraph states that "men and women are entitled to equal pay for work of equal value". This provision guarantees equality of remuneration, not only for identical work, but also for work of different natures but of equal value.[34] This imperative principle is of direct effect and applies not only to the relations between individuals and the State but also horizontally and directly to the relations between private individuals.[35] It is an individual right and one which may be invoked in the courts.

139. However, there is little case-law on the subject; it consists of some 15 cases, most of them concerning employees in cantonal public services.[36] There are very few cases relating to private sector workers. A study seeking to throw light on the reasons why women hesitate to institute court proceedings has revealed that the principal difficulties encountered by women are: difficulty of proof (particularly to demonstrate equivalence of the work); insufficient protection against dismissal, the duration and cost of the proceedings; and the risk of social and occupational isolation.[37]

140. Despite the constitutional guarantee and the direct applicability of the right to equal remuneration, women are still in practice paid less than men. There is a differential of some 30 per cent between the average earnings of men and of women.[38] Taking all employees together, the average earnings of men are Sw F 5,298 per month as against Sw F 3,768 for women (see table 3). The higher the level of training received by women, the greater the wage differential with men at the same level. A study conducted in 1988 attempted to evaluate the extent to which wage differentials between men and women could be attributed to discrimination based on sex. The study sought to determine whether the wage disparity could be explained by objective differences between men's and women's work, and in particular the level of training, occupational experience and health. When allowance had been made for these different factors, there remained an unexplained difference of approximately 14 per cent.[39]

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[34] ATF 113 Ia 107; ATF 117 Ia 262; ATF 117 Ia 270.

[35] ATF 113 Ia 110.

[36] The cases which have arisen have involved an actress (ATF 113 Ia 107 ff.), a group of nurses employed by the city of Zürich (Zbl. 84/193, p. 277 ff.; Zbl. 85/1988, pp. 162 ff.; Zbl. 87/1986, p. 316 ff.; Zbl. 90/1989, p.203), women teachers in a nursery school and women needlework teachers (ATF 117 Ia 262 ff.).

[37] Message concerning the Federal Act concerning equality between men and women (Equality Act), dated 24 February 1993, p. 17.

[38] *Enquête d'octobre 1990 sur les salaires et traitement* (October 1990 Survey of Wages and Salaries). *Vie économique*, 91/1991, pp. 32 ff.

[39] *Untersuchungen zum Lohngleichheitsgrundsatz nach Art. 4 Abs. 2BV, Forschungsbericht No. 1. Lohndiskriminierung in der Schweiz: Evidenz von Mikrodaten*. Prof. Peter Kugler, EJPD (Investigations relating to the principle of equality of remuneration enunciated in art. 4, para. 2, of the Constitution. Research Report No. 1. Wage discrimination in Switzerland: Evidence of microdata). The wage discrimination suffered by Swiss women is estimated at 7 per cent and that suffered by alien women at 28 per cent.

141. The persistence of these disparities in remuneration has demonstrated the inadequacy of the constitutional guarantee and the need to give the principle of equality of remuneration the more concrete form of a legislative instrument. A working group was therefore given responsibility for preparing proposals for legislation. The working group submitted its final report in 1988; on the basis of that report the draft Federal Act concerning equality between men and women (Equality Act) was prepared. The Act was adopted by Parliament on 24 March 1995.

142. The Act concerning equality between men and women expressly prohibits all direct or indirect discrimination based on sex in the area of employment. The prohibition covers not only inequalities of remuneration but every aspect of employment relationships: engagement, allocation of tasks, design of working conditions, basic and advanced training, promotion and termination of employment relationships (art. 3 of the Act).

143. The principal new elements in the Equality Act are designed to facilitate exercise of the right of recourse to the courts. To this end the Act provides for:

(a) A reversal of the burden of proof in favour of the worker when there is a likelihood of discrimination (art. 6). The victim only has to bring forward some evidence indicating a likelihood of discrimination; the employer must then prove that that discrimination is based on grounds other than sex;

(b) A right of legal proceeding and recourse by occupational organizations and organizations whose purpose is to promote equality between the sexes (art. 7). The consent of the person concerned is not required. The right of legal proceeding of organizations is restricted to application for a court ruling that discrimination exists, and then only where the outcome of the proceedings affects a considerable number of employment relationships. These restrictions are designed to ensure that organizations confine themselves to raising questions of principle and defending general interests;

(c) The possibility of obtaining annulment of retaliatory dismissals (art. 10). The woman must make application to the court during the period of notice. If she so wishes, she may waive the right to reinstatement and apply for financial compensation;

(d) The establishment of conciliation offices for the amicable settlement of disputes, available on an optional basis and without charge (but the cantons may make conciliation compulsory) (art. 11);

(e) The right of the parties to act through representatives and to require that the proceedings take place in writing (art. 12).

The Equality Act also provides that the Confederation may grant financial assistance to programmes for the promotion of equality between men and women in working life, and in particular programmes for the promotion of better representation of the two sexes in the different branches of occupational activity, in all types of jobs and at all levels (art. 14).

Method of objective evaluation of jobs

144. The implementation of the principle of "equal pay for work of equal value" implies comparison of activities in order to establish their equivalency. These evaluations may of themselves have discriminatory consequences for women. Article 4, paragraph 2, of the Constitution does not lay down any criteria concerning the objective evaluation of jobs. The Federal Act concerning equality between men and women is equally silent

on the subject. The "Equal Pay" working group therefore recommended in its report that the Federal Office for Equality between Women and Men should draw up directives on the subject. In 1992 that Office published directives concerning job evaluation methods.[40]

145. These directives are primarily concerned with analytical job evaluation methods. The methods proposed involve determination of the degree of difficulty of a job on the basis of given criteria and of the setting of a value for that degree of difficulty. Analytical evaluation consists of the following steps:

(a) A description of the tasks making up the job to be evaluated;

(b) An evaluation of those tasks on the basis of a list of criteria drawn up in advance;

(c) Weighting of those criteria in the light of their importance for the enterprise;

(d) Calculation of the total value of the job by addition of the values obtained from the weighted criteria.

146. The application of this method may allow a wide range of discriminatory elements to creep in at every stage of the evaluation. The directives therefore lay down a number of measures to be taken to avert these discriminatory effects. They include the establishment of joint evaluation committees, the establishment in advance of the list of criteria and of the weighting to be given to each, and periodical verification of the evaluations. They are not binding either on courts or on employers; but they may constitute an effective instrument in the practical implementation of the principle of equal pay.

147. The Equality Act contains no provision requiring the judge to order an expert evaluation of a job at the request of either party. The right to obtain a court order for an expert evaluation is already substantially guaranteed by article 4, paragraph 2, of the Constitution; the Federal Tribunal has deduced from the right to a hearing, which is guaranteed by the Constitution, that the courts are obliged to order an expert investigation when the parties so request.[41] It has also held that the question of equivalency of jobs practically obliges the courts to order an evaluation of the job concerned.[42]

148. Reference is also made to the reports submitted by Switzerland on the application of the ILO Equal Remuneration Convention (No. 100).

C. Health and safety at work

149. In the field of public law one of the peculiar features of Swiss legislation is that it treats separately questions relating to health, which are covered by the Labour Act (Ltr), and the prevention of work accidents and occupational diseases (safety at work), which is covered by the Act concerning accident insurance (LAA).

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[40] *"Hommes et femmes ont droit à un salaire égal pour un travail de valeur égale."* ("Men and women are entitled to equal pay for work of equal value.") Directives concerning the implementation of the right to equal pay. Federal Office for Equality between Women and Men.

[41] AT 117 Ia 268.

[42] AT 117 Ia 274. A provision in the original draft text of the Act giving the parties the right to require the courts to order an expert evaluation was deleted precisely to prevent any restriction of the scope of this ruling.

It should be mentioned that on several occasions parliamentarians have requested the Federal Council to harmonize or unify the two fields.

150. In the field of private law, article 328 of the Code of Obligations requires employers to take "for the protection of the lives and health of workers, the measures dictated by experience, applicable in the current state of technology and appropriate to conditions in the working premises or in the household, to the extent that these may be fairly required of him in the light of the employment relationship and the nature of the work".

1. Health at the workplace[43]

151. The concept of health at the workplace must be understood in a broad sense approaching in dimension that of "occupational health". It embraces ergonomic factors in jobs and at workstations, heat, noise, lighting and the installation of sanitary facilities. Health at the workplace is regulated by articles 6 to 8 of the Labour Act as supplemented by Orders OLT3 (on health matters) and OLT4 (concerning approval of plans).

(a) Scope of the Labour Act

152. OLT3, which lays down occupational health measures, is applicable in all enterprises subject to the Labour Act. The scope of the latter appears to be extremely wide; however, there are a number of exceptions to this principle, which are stipulated in the following articles:

(a) Some categories of enterprises, and in particular agricultural enterprises and certain enterprises subject to special legislation,[44] are excluded from the scope of the Act (art. 2);

(b) Certain categories of workers are also excluded, on the grounds that they are subject to special regulations (homeworkers, commercial travellers) or on account of the particular nature of their employment relationship (ecclesiastical personnel, foreign diplomatic personnel) or of the nature of their occupations (aircrews employed by air transport enterprises) (art. 3);

(c) Lastly, the Labour Act is not applicable to family enterprises (art. 4).

153. Since 1 May 1994 the scope of the regulations concerning occupational health has been extended to certain workers who were previously not covered and to the employees of the federal administration (new art. 3 (a)). It is intended, as part of the revision of the Labour Act, to extend the scope of the latter to include employees of cantonal and communal administrations as well.

(b) Regulations concerning health

154. The requirements in the field of occupational health are laid down in general terms in article 6 of the Labour Act. To protect the health of workers the employer is required to take "all measures that have been shown by experience to be necessary, that the present state of technology permits and that are suited to the operating conditions of the enterprise". He must also arrange his installations and adapt the organization of work "so as to protect the workers as far as possible from dangers to their health and from undue fatigue". The Act

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[43] Reference is also made to Switzerland's reports on the application of ILO Convention No. 120.

[44] In particular, enterprises subject to federal legislation governing work in public enterprises and to federal legislation concerning transport by water; and horticultural and fishing enterprises.

is currently being revised; the proposed new version of this article rounds out health protection by including protection of personal integrity—a concept which comprises in particular protection against sexual harassment. The hygiene measures to be taken are listed in detail in OLT3; the latter lays down the measures to be taken in particular in the fields of building, lighting, workplaces and workloads, and also individual protective equipment and working clothes.

155. Articles 7 and 8 of the Labour Act, and more particularly OLT4, also regulate the procedure for the approval of plans for the construction or transformation of industrial undertakings, and also of certain categories of non-industrial undertakings and parts of enterprises and installations of an industrial character or belonging to non-industrial enterprises. This procedure covers safety as well as health requirements, and has therefore to be conducted in cooperation with the bodies responsible for implementation of the Act concerning accident insurance.

(c) Bodies responsible for implementation and supervision in health matters

156. Implementation of the Labour Act lies with the federal and cantonal authorities. Implementation of the federal regulations on worker protection is the responsibility of the cantons, who act under the direct supervision of the Confederation. The latter, however, is directly competent for federal enterprises and the federal administration. The powers assigned to the cantons are exercised by the 26 cantonal labour inspectorates, which are responsible for monitoring compliance with the law and advising employers and workers (art. 75). The powers of the Confederation are vested in the OFIAMT, of which the federal labour inspectorates and the occupational medicine and health division form part. The four federal labour inspectorates[45] are responsible for inspecting enterprises, advising cantonal authorities, employers and workers and ensuring that the decisions of cantonal authorities are in conformity with the Act and the federal orders (OLT1, art. 80). The occupational medicine and health division of the OFIAMT is responsible for inspecting enterprises, investigating special cases, advising cantonal authorities, employers and workers and carrying out studies of a general nature on occupational medicine matters (OLT1, art. 81).

157. When a contravention of the health regulations occurs, the implementing authority (the cantonal authority, the federal labour inspectorate or the occupational medicine division) must bring the matter to the notice of the employer and instruct him to comply with the relevant provisions (Labour Act, art. 51, para. 1). Paragraph 2 of the same article provides that, if the employer fails to take the measures ordered, the cantonal authority will take a formal decision and notify it to him. If he fails to comply, thus seriously endangering lives or health among workers or in the vicinity of the enterprise, the authority may take administrative enforcement measures. In particular, it may prohibit the use of the premises or order the closure of the enterprise for a specified period (Labour Act, art. 52). In addition, the employer may incur criminal liability (art. 59); the Federal Act concerning administrative penal law is applicable.

158. Plans for the construction or transformation of industrial enterprises, certain categories of non-industrial enterprises or parts of enterprises and plant of an industrial character or belonging to non-industrial enterprises must be submitted for approval to the cantonal authority, which will grant approval if the plans conform to the regulations. It may require the employer to take special protective measures (Labour Act, art. 7, para. 2).

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[45] The federal inspectorates are divided into four districts, with head offices in Lausanne, Aarau, Zurich and St. Gallen respectively.

(d) Appeals procedures

159. Appeals against decisions of a cantonal authority may be submitted to the cantonal appeals body (Labour Act, art. 56, para. 1). The procedure is governed by cantonal law; the appeals body may be the cantonal government, the competent department or an administrative tribunal, according to the canton concerned. An administrative appeal against a final decision at cantonal level may be submitted to the Federal Council where there is no possibility of appeal under administrative law to the Federal Tribunal (art. 57). [46]

2. Safety at the workplace

160. Previously to the adoption of the Federal Act concerning accident insurance (LAA) the legal requirements concerning safety at the workplace derived from two instruments: the Act concerning sickness and accident insurance for enterprises subject to compulsory insurance; and, for enterprises not covered by insurance, the Labour Act. The adoption of the LAA was designed primarily to establish a uniform set of regulations governing the prevention of work accidents and occupational diseases; since it came into force in 1984 it has been the sole legislative instrument applicable in this field. The Act is designed to regulate compulsory accident insurance for workers; but it also contains provisions concerning the prevention of work accidents and occupational diseases. These provisions are fleshed out in the Order on the Prevention of Work Accidents and Occupational Diseases (OPA). The Labour Act (arts. 7 and 8) and OLT4 remain applicable as regards safety at the workplace in the context of approval of plans (see below).

(a) Scope of regulations concerning prevention of work accidents and occupational diseases

161. The regulations on the prevention of work accidents and occupational diseases are applicable in every enterprise employing workers in Switzerland. Thus their scope is much wider than that of the Labour Act.

162. However, there are a number of exceptions. Firstly, the regulations do not apply to members of the employer's family (under certain conditions) or to persons enjoying privileges under international law. Secondly, the Federal Council is empowered to exclude entirely, or to restrict, the applicability of these regulations to specific enterprises or workers. The regulations are thus not applicable in any way to private households or to the installations and equipment of the armed forces (OPA, art. 2, para. 1). In addition, the Federal Council has designated a certain number of enterprises to which only the regulations concerning the prevention of occupational diseases are applicable[47] (OPA, art. 2, para. 2). However, some of these enterprises, although excluded from the scope of the accident prevention regulations, are nevertheless subject to the regulations concerning safety (art. 2, para. 3).

(b) Safety regulations

163. Article 82 of the Act concerning accident insurance establishes a general obligation to prevent work accidents and occupational diseases. The employer is "required to take all measures that experience has shown

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[46] On the subject of administrative law remedies, reference is made to the core document submitted by Switzerland (HRI/CORE/1/Add.29), paragraph 51.

[47] These are: transportation services (of the federal railways, the concession-holding railways, the cable-car and funicular services holding federal concessions, concession-holding motor transport undertakings, motor vehicles owned by the postal and telegraph service, water transport enterprises holding federal concessions and vessels owned by the federal railways), air transport enterprises, nuclear installations and pipeline transport enterprises.

to be necessary, that the present state of technology permits and that are appropriate to the conditions given". He must induce his employees to cooperate. The latter, for their part, are required to assist the employer in the implementation of the provisions in force. The OPA fleshes out these general principles by laying down a set of technical requirements relating to technical installations and apparatus, the working environment and the organization of work.

(c) Implementing and supervisory bodies responsible for safety matters

164. There are several executive bodies with competence to supervise compliance with the regulations on prevention. The principal supervisory body is the Swiss National Accident Insurance Fund (CNA). Its competence includes prevention of accidents occurring in certain enterprises, or caused by specified items of technical apparatus, and the prevention of occupational diseases in all enterprises. The bodies responsible for implementation of the Labour Act are also required to exercise a measure of supervision. Thus the 26 cantonal inspectorates are responsible for supervising accident prevention in enterprises which are not within the remit of the CNA. The federal agencies (the federal inspectorates and the occupational medicine division) cooperate with the CNA in the enterprises they inspect, ensure uniform implementation of the regulations in the cantons and monitor the implementation of those regulations in the federal administration and federal enterprises. Some technical inspectorates may be assigned tasks in specialized fields.[48] A federal coordinating commission for occupational safety matters (CFST) has been established; it ensures coordination and harmonization of the activities of the different implementing agencies and the uniform application of the regulations.

165. The implementing agencies have inspection powers, and employers are required to allow them access to all premises and workplaces in their enterprises. Where an infringement is identified, an implementing agency may either confine itself to giving advice or address a formal warning to the employer (OPA, art. 62). If the employer fails to act on the warning, the authority may, after hearing the employer and the workers concerned, take a formal decision ordering the measures to be taken. The decision is executory. If the employer fails to comply with it, the authority may decide to increase his accident insurance premium (art. 66). It may also take coercive measures as well as increases in premiums where appropriate (art. 67). It may, too, institute proceedings in the criminal courts.

(d) Appeals procedures

166. Decisions may be challenged by the procedure of an objection addressed to the institution which notifies them. Since 1 January 1994 it has been possible to appeal against decisions of implementing bodies to the Federal Accident Insurance Appeals Board (LAA, art. 109). In second and final instance an appeal against a decision of the Board may be submitted to the Federal Insurance Tribunal.

167. Reference is also made to the reports submitted by Switzerland to the ILO bodies concerned with the application of the conventions relating to occupational safety and health, and in particular Conventions Nos. 62, 81, 115, 120, 136 and 139.

3. Statistical data on work accidents and occupational diseases

168. This report only contains data based on the Act concerning accident insurance, which are available only from 1986 onwards; the data based on the earlier legislation (LAMA) do not offer a reliable basis for

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[48] These fields are: installations under pressure, high-tension installations, welding techniques, the gas industry, and the prevention of accidents in the agriculture and construction sectors.

comparison. The number of work accidents has steadily decreased. On the other hand, the numbers of non-work accidents have been increasing to such an extent that the risk of death due to an accident during leisure time is twice as great as that of a fatal accident at the workplace.

169. The risk of a work accident varies greatly from one branch of the economy to another. For example, in the principal construction sector cases of occupational disease among employees are twice as frequent, and work accidents five times as frequent, as among employees in the chemical industry. The risk of a fatal work accident in a transport enterprise is three or even four times greater than among employees in the metal industry. In addition, men are more frequently accident victims than women and young persons than older persons. Single persons have more accidents during leisure time than married persons; and aliens have more work than non-work accidents.

Table 4. Work and non-work accidents by sex and branch of economic activity in 1992

	Work accidents		Non-work accidents	
	Men	Women	Men	Women
Agriculture, forestry	9 851	958	4 112	876
Energy	2 283	84	3 433	333
Arts and crafts, industry	87 033	11 988	96 997	28 364
Building, civil engineering	79 095	834	46 223	3 081
Commerce, catering	39 804	16 486	51 810	35 475
Transport and communications	18 228	2 119	25 257	7 645
Banking, insurance	11 069	4 208	45 032	25 168
Other services	12 739	9 971	17 866	25 395
Public administration	11 492	4 725	25 038	16 853
TOTAL	271 594	51 373	315 768	143 190

Source: Service for centralization of accident insurance statistics.

Table 5. Numbers of cases of invalidity and death accepted by insurers

	1986	1987	1988	1989	1990	1991	1992	1993
Invalidity	1 833	2 015	2 069	2 201	2 281	2 480	2 533	2 754
Death	310	341	308	300	336	336	275	242

Source: CNA: Statistics of accidents incurred by workers, 1988-1992.

Table 6. Combinations of accident processes and objects involved most frequently encountered in work accidents occurring in 1992

Accident process and object involved	Proportion of all work accidents
1. Being struck or otherwise affected by splinters, shavings, dust	9.4%
2. Incisions, cuts or abrasions from handtools and auxiliary apparatus	4.7%
3. Slipping, sliding, stumbling, falls and missteps without indication of object involved	4.3%
4. Slipping, stumbling, falls, missteps on staircases, steps, ramps	3.0%
5. Incisions, cuts and abrasions sustained from objects	1.6%

Source: CNA: Statistics of accidents incurred by workers, 1988-1992.

170. Between 1988 and 1992 the numbers of cases of occupational disease decreased by almost 10 per cent, both in absolute terms and in relation to the numbers of employees. In 1992 the rate of incidence was 14.8 cases of occupational disease for every 10,000 full-time employees. The diseases most frequently encountered were those affecting the locomotor apparatus, followed by skin diseases; these two categories accounted for almost 70 per cent of all cases of occupational disease. In third and fourth places came respiratory diseases and hearing loss caused by noise. In view of the wide range of substances and activities giving rise to illnesses, cases of occupational disease occur in almost every branch of economic activity in some form or other.

Table 7. Numbers of recognized cases of occupational disease, 1988-1992

	1988	1989	1990	1991	1992
Men	3 988	4 163	4 180	3 840	3 705
Women	1 412	1 443	1 375	1 284	1 199
TOTAL	5 400	5 606	5 555	5 124	4 904

Source: CNA: Statistics of accidents incurred by workers in Switzerland, 1988-1992.

D. Equality of opportunity to be promoted

171. As the Federal Council pointed out in its message concerning the Equality Act, men and women do not have the same types of jobs, whether with regard to the occupation exercised, the branch concerned or positions in the occupational hierarchy. The data produced by the Swiss survey of the economically active population for 1991[49] indicate that one out of every two economically active men is engaged in an occupation comprising managerial tasks, either as a self-employed person or in a managerial or supervisory post, as against one out of

[49] *La situation du femmes et les hommes sur le marché du travail* (The situation of women and men in the employment market). Federal Statistical Office, Bern, 1994.

every four women. The majority of economically active women (64 per cent) are in positions without command responsibilities; only 12 per cent exercise managerial functions, and only 3 per cent are members of top management. This difference is partly due to differences in levels of education and training. However, this factor has more influence on the status of men in their respective occupations than on that of women. A comparison of occupational status with the level of education and training (primary, secondary or tertiary) reveals greater differentials among men. The proportion of women in top management is 2 per cent for women with primary education and training and 6 per cent for those who have attained tertiary levels; the corresponding figures for men are 4 per cent and 22 per cent.

172. A number of measures have been taken to secure in practice equality of opportunities to be promoted for women. On 18 December 1991 the Federal Council published instructions concerning the improvement of the representation and the occupational status of women employees in the general administration of the Confederation. In particular, these instructions require the different departments to draw up promotion programmes in order to give the instructions practical effect. The Office for Women's Affairs in the federal personnel department is responsible for supporting, monitoring and evaluating promotion programmes. Every four years it prepares a report for the Federal Council. Mention should also be made of the Federal Decree of 30 January 1992 introducing special measures designed to promote the appointment of women to university teaching posts during the period 1992-1995. This decree provides for special subsidies designed to increase significantly the proportion of women in the teaching staffs of universities and requires university heads to ensure that at least one third of the posts so financed are occupied by women. Efforts have also been made to improve training levels among women. The Federal Decree of 23 March 1990 provides for special measures to promote advanced vocational training; among other things, it provides for special subsidies for the advanced training of women. Finally, it should be mentioned that measures have also been taken in the private sector to guarantee equality of opportunities for women in the area of promotion.

173. The Federal Act concerning equality between men and women (LEg), dated 24 March 1995, should enable practical effect to be given to the constitutional mandate and guarantee equality of opportunity in the area of promotion. The Act prohibits discrimination on grounds of sex in every area of employment, and particularly with regard to promotion (art. 3). Any person subjected to, or likely to become subjected to, discrimination may apply to the competent judicial authority to have the discrimination prohibited (prevention), stopped (discontinuance) or officially determined (establishment of right) (art. 5, para. 1). In addition to these remedies, the victim has the remedy of proceedings for damages and is thus able to demand compensation for prejudice (and, where appropriate, distress) suffered. The amount of the compensation is limited; it may not exceed the equivalent of three months' pay in cases of discrimination relating to a refusal of employment and of six months' pay in cases of discrimination relating to the termination of an employment relationship governed by the Code of Obligations. The amount of compensation is fixed in the light of all the circumstances and calculated on the basis of the remuneration to which the person discriminated against was entitled or would in all likelihood have been entitled (LEg, art. 5, paras. 2 and 4).

174. In addition, the Act provides for financial assistance by the Confederation to programmes promoting equality between women and men in working life, and in particular programmes designed to lead to better representation of both sexes in the different branches of occupational activity, in all types of post and at all levels (art. 14). The Confederation may also support private organizations the activities of which consist of informing and advising women on occupational matters or the occupational reintegration of persons who have voluntarily taken a break in their gainful employment (art. 15).

175. Regarding this subject reference is also made to other relevant passages in this report (see under art. 3).

E. Rest, leisure, hours of work, holidays with pay

1. Rest

176. The chapter in the Labour Act dealing with rest (arts. 15 to 22) is mainly concerned with the prohibition of night and Sunday work; but it does also mention rest breaks. Article 15 provides that work must be interrupted by a break of at least a quarter of an hour if the length of the working day exceeds five and a half hours, half an hour if it exceeds seven hours and one hour if it exceeds nine hours. Article 21 establishes a right to a half-day of rest when the working week is spread over more than five days. Article 22 prohibits the replacement of rest by money or any other benefit except on the cessation of the employment relationship.

(a) Sunday work

177. Article 18 of the Labour Act contains a prohibition of principle of the employment of workers on Sundays; Sunday is thus established as a day of rest. However, the law authorizes certain exceptions, which are in principle subject to authorization. The cantonal authorities may temporarily authorize Sunday work in cases of duly proven urgency provided that the workers concerned consent and are awarded a wage supplement of at least 50 per cent. The OFIAMT (in the case of an industrial enterprise) or a cantonal authority (for other enterprises) may also authorize an enterprise to work regularly or periodically on Sundays (art. 19). During 1990 the OFIAMT issued 232 authorizations for Sunday work. These authorizations are published in the *Official Gazette* and are subject to appeal, which may be submitted to the Appeals Board of the Federal Department of Public Finance (DFEP). A decision of the Board may in its turn be the subject of an administration appeal to the Federal Tribunal. Some enterprises (listed in OLT2) are exempted from the obligation to apply for authorization for Sunday work.[50]

178. When Sunday work spreads over both the morning and the afternoon or is of more than five hours' duration, the worker concerned must be compensated by a period of compensatory rest of at least 24 consecutive hours' duration, which must coincide with a Sunday at least once every fortnight (Labour Act, art. 20). In the revised version of the Labour Act it is proposed to lengthen the duration of this compensatory rest period so that persons working on a Sunday will be entitled to obtain additional free time corresponding in duration to 10 per cent of the time worked on a Sunday. In addition, the weekly compensatory rest day will have to precede or follow a period of daily rest of 11 hours' duration, so that the worker will have a period of 35 hours free from work. This proposal is being examined by Parliament and may be amended.

179. In enterprises not falling within the scope of the Labour Act or to which no special legislation is applicable, article 329 of the Code of Obligations states that an employer must grant one day of rest (generally Sunday) each week.

180. According to a survey conducted by the OFIAMT, more than 6 per cent of workers are employed in an enterprise resorting to regular week-end shift working. In the services sector the proportion exceeds 10 per cent

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[50] The following are examples of exempted branches: hospitals and clinics; residential homes and boarding-schools; hotels, restaurants, cafés and brasseries; air transport ground staff; newspaper stands and enterprises catering for the needs of travellers; electricity, gas and water supply enterprises; building and civil engineering enterprises; enterprises editing newspapers and magazines; radio and television broadcasting enterprises; theatres; security enterprises and caretaking staff; skating-rinks and swimming-pools.

and is four times higher than in industry. The proportion of women performing week-end shift work is significantly higher than that of men (8 per cent as against 5.8 per cent).[51]

(b) Night work

181. The Labour Act lays down a prohibition of principle of employment of workers at night, i.e. between 8 p.m. and 5 a.m. in summer and 8 p.m. and 6 a.m. in winter (art. 16). Exceptions, subject to authorization, are possible, either temporarily in cases of urgency (provided both that the workers concerned consent and are paid a wage supplement of at least 25 per cent) or regularly or periodically for technical or economic reasons (art. 17). These authorizations may be appealed against in the same ways as authorizations of Sunday work. OLT2 contains a list of the branches of the economy which are exempted from having to apply for authorization of night work.

182. The draft for the revision of the Labour Act redefines the meaning of the terms "day" and "night". According to the new definition, "night" would be the period between 11 p.m. and 6 a.m.; it could be moved forwards or backwards by one hour but could in no case be less than seven hours in duration. Employment of workers during the night period would remain subject to authorization. The draft contains provision for compensatory measures, and in particular additional free time equivalent to 10 per cent of the duration of the night work. A worker performing night work for a long period would be entitled on request to a medical examination. For certain categories of workers such examinations might be declared compulsory. The employer would also be required to take additional measures for the benefit of workers employed at night (organization of transport, rest and catering facilities, etc.). The proposed revision of the Labour Act is currently being examined by the legislature.

183. In actual practice, 8 per cent of all employees work regularly at night. In the tertiary sector the proportion is twice as high as that in industry (10.5 per cent as against 5 per cent). The proportion of women employees working at night is substantially the same as that of men (8.1 per cent and 7.9 per cent respectively).[52]

2. Hours of work

184. Weekly hours of work are fixed in the Labour Act. The latter sets maximum hours; shorter hours may be set under the terms of collective agreements.

185. The maximum legal working week is set at 45 hours for workers employed in industrial enterprises and for office workers, technical staff and other salaried employees, including the sales personnel of large retail enterprises. For other workers the maximum working week is 50 hours (Labour Act, article 9). Under OLT2 certain categories of enterprises are allowed to employ their workers for more than 50 hours per week.

186. The Act concerning the status of public officials sets the duration of the working week at 42 hours. By a decision dated 21 December 1994 the Federal Council reduced the working week to 41 hours. The reduction was brought into effect on 1 June 1995 in the form of compensatory days off. The Federal Council also

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[51] *Enquête représentative sur le travail de nuit, de fin de semaine et en équipe en Suisse* (Sample survey of night, week-end and shift work in Switzerland). *Vie économique*, 6/94.

[52] *Enquête représentative sur le travail de nuit, de fin de semaine et en équipe en Suisse* (Sample survey of night, week-end and shift work in Switzerland). *Vie économique*, 6/94.

introduced a system of flexible working hours permitting the choice of a working schedule of between 40 and 44 hours per week.

187. Proposals to reduce legal weekly working hours have been put forward several times in the form of people's initiatives. A first initiative, launched in 1955 and seeking to introduce a 44-hour week, was rejected by popular vote. In 1973 the Progressive Organizations of Switzerland (POCH) put forward an initiative entitled "For the 40-hour week". That initiative was rejected on 5 December 1976 by a majority of the people and by all the cantons. In 1984 the Swiss Trade Union Association (USS) launched a new initiative entitled "For a reduction of hours of work", which sought to introduce a 40-hour week in stages. This initiative was put to the vote in 1988 and was also rejected, by majorities of both the people and the cantons (only Ticino and the Jura voted in favour).

188. Notwithstanding the rejection of these initiatives, actual weekly working hours in Switzerland have steadily become shorter, and are now well below the maximum stipulated by law. In 1993 average working hours were 41.9 per week (1.5 hours less than in 1985).[53] The average varies from one branch of the economy to another; in five branches[54] weekly working hours are less than 41, whereas in building and civil engineering the average is 42.7 hours. Average weekly working hours also differ from canton to canton: Geneva has the lowest average (41.2 hours) and the canton of Grisons the highest (42.8 hours).

3. Periodic holidays with pay[55]

189. There is no general legislation on annual holidays with pay applicable to all workers. Article 329 (a) of the Code of Obligations, which is applicable to employment relationships subject to private law, provides that paid holidays must not be less than four weeks per year in duration. For workers and apprentices under age 20 the minimum holiday period is five weeks. This provision is a substantially imperative provision of law; no exceptions, other than those more favourable to the worker, may be made either in employment contracts or in collective agreements. It should be mentioned here that employment contracts containing exceptions to article 329a may be concluded either orally or in writing. Most collective agreements contain clauses relating to holidays.[56] The average holiday period as fixed in collective agreements in 1992 was 22.6 days per year; holidays were longest in transport and communications (25.7 days) and shortest in agriculture (21.7 days per year).

190. The employer fixes the dates of holidays, taking into account the wishes of the worker. Article 329c of the Code of Obligations stipulates that holidays must be granted during the calendar year to which they

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[53] Statistics compiled from data transmitted by the Department for the Centralization of Accident Insurance Statistics, in: *Baisse de la durée normale du travail dans les enterprises en 1993* (Reduction in normal working hours in enterprises in 1993). *Vie économique*, 4/94.

[54] The branches in question are: machinery construction, chemical industry, tobacco industry, graphic arts and clock and watch manufacture.

[55] Reference is also made to Switzerland's reports on the application of ILO Convention No. 132.

[56] A survey of 68 collective labour agreements revealed that 96 per cent contained clauses concerning holidays. *Durées du travail fixées dans les conventions collectives de travail en 1992* (Hours of work as fixed in collective labour agreements in 1992). *Vie économique*, 2/94.

correspond and must include a period of at least two consecutive weeks. There is also a prohibition of replacement of holidays by money or other benefits for as long as the employment relationship lasts.

191. There are special regulations governing the annual holidays of employees of the federal administration; these also provide for four weeks' holiday. There are equivalent regulations applicable in cantonal and communal administrations.

192. Article 329 also requires the employer to allow the worker the customary hours and days of leave of absence (absence on account of family or personal events). However, the Code of Obligations does not require him to pay the worker's wage during such absences; the wage is payable only if specific provision is made for payment (for instance, in a collective agreement) or if payment is customary in the enterprise or the branch in question. Federal officials can obtain leave of absence with pay, which is granted in the light of the grounds invoked.

4. Remuneration for public holidays

193. The Labour Act assigns sole powers of legislation on public holidays to the cantons. Paragraph 2 of article 18 authorizes them to equate a maximum of eight public holidays a year with Sundays. However, remuneration of public holidays is a matter governed by private law and is outside the scope of cantonal legislation. Payment is not compulsory; but collective agreements generally contain provisions on the subject. As a rule, except where stipulated otherwise, public holidays are remunerated when wages are paid monthly. Where wages are paid on an hourly basis, public holidays are remunerated only where specific provision to that effect is made in the contract.

194. In 1993 a new article of the Constitution (No. 116 *bis*) concerning the national holiday (1 August) was accepted by the majority of the people and all the cantons. On 30 May 1994 the Federal Council adopted an Order concerning the national holiday, which came into force on 1 July 1994. This Order states that with respect to labour law the national holiday is equated to a Sunday; however, to avoid encroachment on the powers of the cantons with regard to regulation of public holidays, it is not added to the number of public holidays as fixed in article 18 of the Labour Act. The Order also states that the national public holiday shall be a paid holiday. This provision is applicable to all economically active persons, including hourly-paid and part-time workers. On 19 October 1994 the Federal Council adopted a proposal for a Federal Act concerning the national holiday; the proposal covers the same grounds as the Order in its essentials. The draft is currently being examined by the legislature.

VIII. ARTICLE 8: TRADE UNION RIGHTS

A. Principal instruments applicable

195. The following are the principal instruments applicable:

(a) International instruments:

European Convention on Human Rights (art. 11), ratified in 1974;

International Covenant on Civil and Political Rights (art. 22), ratified in 1992;

ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), ratified in 1975;

ILO Labour Relations (Public Service) Convention, 1978 (No. 151), ratified in 1981;

(b) National instruments:

Federal Constitution, articles 56 and 34 *ter*;

Code of Obligations, dated 30 March 1911 (arts. 336 and 356 ff.);

Swiss Civil Code, dated 10 December 1907 (arts. 60 ff.);

Loi fédérale permettant d'étendre le champ d'application des conventions collectives du travail (Federal Act permitting extension of the scope of collective labour agreements) (LECCT), dated 28 September 1956;

Loi fédérale concernant l'office fédérale de conciliation en matière de conflits collectifs (Federal Act concerning the Federal Department for Conciliation in Collective Disputes), dated 12 February 1949;

Loi fédérale sur le statut des fonctionnaires (Federal Act concerning the status of public officials (St), dated 30 June 1927.

B. Freedom of association

196. At the international level freedom of association is also protected in Switzerland by ILO Convention No. 87, article 11 of the European Convention on Human Rights (CEDH) and article 22 of the International Covenant on Civil and Political Rights.

1. Right to form trade unions

197. The right to form trade unions derives from article 56 of the Federal Constitution, which guarantees freedom to form associations. In 1899 the Federal Tribunal expressly recognized that guarantee also comprised freedom to form trade unions.[57] By virtue of this right employers and workers are thus free to organize to defend

[57] ATF 25 II 802; 30 II 282.

their collective interests. Although article 56 of the Constitution uses the term "citizens", aliens also enjoy the right to organize.

198. However, article 56 of the Constitution restricts the exercise of this right inasmuch as it provides that associations whose purpose or means are unlawful or dangerous to the State do not enjoy the protection afforded by the freedom to form associations. The concept of unlawfulness derives from the legal rules in force; the concept of danger is more vague and could lead to a variety of interpretations. However, the Federal Tribunal has decided that only associations which set out to impose their views by means other than peaceful and democratic means must be prohibited.

199. According to article 56 of the Constitution, responsibility for proceeding against unlawful or dangerous associations lies with the cantons.[58] However, it is admitted that the federal authorities may proceed against associations that are dangerous to the federal State. The political authorities may prohibit an unlawful or dangerous association, but it is for the courts to pronounce its dissolution (Civil Code, art. 78). The severity of the action taken against an association will vary according to the nature of the unlawfulness or of the danger it represents. Here the legal principle of proportionality plays an essential role. In this connection it must be pointed out that the risk of action by the administrative authorities against associations or employers or workers is very slight. In practice the federal authorities have never made use of this power except against certain political parties during the 1930s and 1940s.[59]

200. Apart from the constitutional guarantee, there are no specific regulations in Swiss law relating to occupational organizations. Thus the right to form associations is governed by general legislation, and in particular the provisions of the Civil Code relating to associations (arts. 60 ff.).[60] These provisions do not make the creation of associations subject to any particular conditions as regards substance or form. Individuals may form them freely, and the Federal Tribunal has held that a requirement of prior authorization would be contrary to the constitutional guarantee of freedom of association.[61]

The right to join a trade union

201. Freedom to form associations has both a positive and a negative aspect. The positive aspect of this right consists not only of freedom to create an occupational organization without hindrance but also of freedom to become a member of the trade union of one's choice[62] and to carry on activities within it and the right to

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[58] The only canton to have adopted legislation to prevent abuses of the freedom to form associations is that of Vaud (in 1938).

[59] In 1937 and 1938, three cantons prohibited the communist party. In 1940 the Federal Council prohibited and dissolved the communist party at the federal level. During the same year the national socialist party was also prohibited. During this period three other parties were also dissolved. All the prohibitions on parties were lifted under an order dated 27 February 1945.

[60] On this subject reference is made to paras. 390 ff. of Switzerland's initial report on the implementation of the International Covenant on Civil and Political Rights.

[61] ATF 96 I 229.

[62] There is no right of admission to an association against the will of its members. ATF 86 II 365.

dissolve it. The negative corollary of this freedom is the right not to belong to a union and the right to leave it freely.

202. Special protection is afforded to the freedom to join a union. Workers enjoy special protection under the Code of Obligations inasmuch as termination of a worker's contract of employment is wrongful if it is effected on the grounds of his membership (or non-membership) of a workers' organization or of the lawful exercise of a trade union activity (art. 336, para. 2 (a)). Likewise, article 34 *ter* of the Constitution provides that the extension of the scope of agreements should not infringe freedom of association. The same proviso is to be found in the Act permitting extension of the scope of collective agreements (LECCT, art. 2 I). Article 356a of the Code of Obligations also states that any clause in a collective agreement requiring employers or workers to belong to a contracting association are null and void. Clauses of the "closed shop" or "union shop" types are therefore unlawful.

3. The right to establish federations and to join international trade union organizations

203. The right to form trade unions guaranteed by the Constitution is equally applicable to associations. Thus federations may be established on the same legal basis as first-degree organizations and enjoy the same constitutional and legal guarantees. Thus trade unions may freely join federations or international trade union organizations provided that the latter are not pursuing aims or using means which are unlawful or dangerous to the State.

4. The right of trade unions to function freely

204. Trade unions function freely, draw up their constitutions and laws freely, determine their structures and draw up their programmes of action. An association acquires legal personality once it has adopted its by-laws and expressed therein its intention to be organized on a corporate basis (Civil Code, art. 60).

205. In a ruling dated 8 November 1988 the Federal Tribunal held that trade unions have the capacity, subject to certain conditions, to initiate proceedings in the courts to have victimization of their members stopped.[63] The conditions laid down in that ruling are as follows: the by-laws must make provision for the defence of the interests of the members; the latter must have the capacity to bring an action; and there must be present a collective interest extending beyond the individual interest of the members in bringing the action.

206. One of the fundamental activities of occupational organizations is the conclusion of collective labour agreements (CCT). CCTs are governed by articles 356 ff. of the Code of Obligations; they may be concluded by one or more employers or organizations of employers and one or more organizations of workers. Thus a collective labour agreement is a "contract" which only binds the contracting parties; the authorities play no part either in its conclusion or in its performance. However, the authorities may declare a CCT compulsory by extending its scope to employers and workers who are not bound by it (dissidents). The first paragraph of article 34 *ter* of the Constitution authorizes the Confederation to enact legislation "on the general binding effect of collective labour and other agreements between associations of employers and salaried employees or workers with a view to promoting labour peace". The Act permitting extension of the scope of a collective labour agreement (LECCT) was adopted on 28 September 1956. Under the terms of its article 1 I the authorities may, at the request of the parties, extend the applicability of an agreement to all workers and employers in the branch or occupation concerned and who are not bound by it. The extension is subject to fulfilment of certain substantive

[63] Ruling published in *Praxis*, No. 83, April 1989, p. 293.

conditions[64] and of conditions relating to the importance of the agreement.[65] An extension may apply to the territory of a single canton (the extension is ordered by the cantonal government concerned and subsequently approved by the Federal Council), several cantons or the whole of Switzerland (the extension being pronounced by the Federal Council). Once extended, these agreements become binding for the total period of their extension.

207. Between 1 July 1993 and 30 June 1994 the Federal Council, at the request of the contracting associations concerned, extended the scope of 14 collective agreements (six national and eight cantonal). On 30 June 1994, nine national and nine cantonal extended agreements were in force, affecting in all approximately 45,250 employers and 349,700 workers. However, the number of such agreements in relation to the total number of collective agreements in Switzerland (estimated at 1,200) is small.

5. Information on the number and structure of trade unions

208. Over the last 30 years the proportion of unionized workers has varied between 30 and 35 per cent.[66]

209. The majority of the workers' unions in Switzerland belong to one of the four apex organizations. The largest central workers' organization is the Swiss Trade Union Association (USS). In 1993 it had 431,052 members (14.9 per cent of them women), distributed among 15 affiliated federations. The most important of the latter are: the Building and Industrial Workers' Union (125,139 members), the Swiss Trade Union for Industry, Construction and Services (106,638 members) and the Swiss Railway Workers' Federation (60,619 members). The local sections of these unions are associated within cantonal federations. The supreme organ of the USS is the Congress, which meets every four years.

210. In addition to the USS, there is the Federation of Swiss Staff Associations (130,147 members, nine affiliated unions) and the Confederation of Swiss Christian Trade Unions (106,267 members belonging to 13 unions). There are seven other unions, with 166,968 members in all.

211. There are three principal employers' organizations. The Central Union of Swiss Employers' Associations comprises 34 occupation-based and 37 regional associations. The Swiss Union for Commerce and Industry is

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[64] An extension can be decided on only if the following conditions are fulfilled: it must be necessary; it must not adversely affect the general interest; it must not adversely affect the legitimate interests of other branches of the economy or other population groups; and it must take into account the interests of minorities in the branches concerned (LECCT, art. 2, I). In addition, an agreement the extension of which is applied for must not violate equality before the law; it must not run counter to the imperative rules of law; and it must not infringe freedom to form associations (arts. 2 IV to 2 VII).

[65] Article 2 of the LECCT lays down the requirement of a triple quorum:

The employers bound by the agreement must represent more than half of the employers who would be bound by the extended agreement;

The same condition is required for the workers;

Finally, the employers bound by the agreement must employ more than half of the workers who could be bound by the agreement if it were extended.

[66] OECD (ed.), *Employment Outlook*, July 1992.

primarily economic in nature; it comprises the chambers of commerce and occupation-based associations. The Swiss Arts and Crafts Union contains both cantonal arts and crafts unions and occupation-based associations.

6. The right to strike

212. There is no provision in the Federal Constitution, cantonal constitutions (with the exception of that of the canton of the Jura) or in legislation which explicitly guarantees the right to strike. However, recourse to strike action as a means of pressing claims is accepted.

213. The question of recognition in Swiss law of the right to strike is a subject of controversy. The majority opinion in legal thinking is that the right to strike has its basis in the freedom to organize, which itself derives from the freedom to form associations guaranteed by the Constitution. However, the Federal Tribunal, in a ruling dated 18 June 1985,[67] did not follow this line of thinking; it held that the question of whether the right to strike was protected by the Constitution remained open. However, the Tribunal did state that it could not be held that Swiss labour legislation was silent on the question of the right to strike. It should be mentioned that this ruling was handed down before ratification of the Covenant. In addition, the Federal Tribunal has expressed uncertainty with regard to whether ILO Convention No. 87 guaranteed the right to strike.[68] The ILO Committee of Experts on the Application of Conventions and Recommendations recently confirmed that "the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87".[69] Today the discussion is centred not so much on the recognition of the right to strike as on its contents and its effects on the contract of employment.

214. Although the right to strike as a means of pressing claims is in principle authorized, recourse to it may be made subject to certain conditions. The Federal Tribunal, in the ruling mentioned earlier, stipulated four conditions, all of which had to be met for a strike to be lawful:

(a) The strike must be organized, and only a workers' organization (i.e. not a group of non-organized workers who have spontaneously joined together) may participate in it. Wildcat strikes are thus prohibited;

(b) The strike must not be designed to further existing legal claims, for which only the courts or joint arbitration bodies are competent. The aim of the strike must be the establishment of new labour regulations, which must be of a nature to be set out in a collective agreement. Political strikes are prohibited;

(c) The strike must not disturb relative labour peace (Code of Obligations, art. 357a, para. 2) or an absolute labour peace agreement;

(d) Lastly, the strike must respect the principle of proportionality between the objectives and the means used. This condition is of particular importance and it subjects recourse to strike action to the rule of *ultima ratio*: strike action is deemed to be a means to be used as a last resort in order to restore labour peace when bargaining and conciliation have failed.

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[67] ATF 111 II 245 (appended).

[68] ATF 111 II 251.

[69] International Labour Conference, 81st session, 1994, Report III: Freedom of association and collective bargaining: General survey, p. 66, para. 151.

215. If a strike does not meet these four conditions, it is unlawful and provides for the immediate termination of the strikers' employment contracts. Conversely, if these conditions are fulfilled, the strike is deemed to be lawful.

216. The subject of the effect of a lawful strike on contracts of employment has for long been a matter of controversy between the supporters of the theory of separation and those of the theory of suspension. The Federal Tribunal, in a ruling dated 23 March 1995, decided in favour of the theory of suspension, stating that "For the period of a lawful strike, employment relationships are not terminated; but the principal obligations of the parties—the obligation to perform the work and the obligation to pay the wage—are suspended" (Preamble, para. 5).[70]

217. In addition to the restrictions established in case-law, the exercise of the right to strike is subject to certain restrictions of a legislative nature. For instance, article 6 of the Federal Act of 12 February 1949 concerning the Federal Department of Conciliation in Collective Labour Disputes forbids all industrial action during the first 45 days of conciliation or arbitration proceedings. In addition, the Federal Act concerning the status of public officials prohibits them from going on strike (see below).

218. The principal restrictions on the exercise of the right to strike have been established by the social partners themselves within collective labour agreements. Under article 357a, paragraph 2, of the Code of Obligations, which establishes the concept of relative labour peace, the very existence of a collective agreement debars recourse to industrial action (strike, lockout) in relation to any subject covered by the agreement. The parties may also stipulate absolute labour peace by extending the prohibition of recourse to strike action to cover all disputes, whether the subject is dealt with in the agreement or not. In such cases the parties must expressly agree thereto (end of same article).

219. As a result of these labour peace agreements, disputes are rare and there is relatively little judicial precedent. During the 10-year period 1983-1992, only 23 strikes were recorded; the most important involved 600 workers and lasted 28 days. In 1994, there were eight strikes (one of them nationwide); they involved 238 enterprises and 6,901 workers and caused the loss of 14,380 working days (as against 673 in 1992).

C. Restrictions on these rights affecting public officials and serving military personnel

1. Restrictions on freedom to form association

220. Freedom to form associations, being a fundamental right guaranteed by the Constitution, is available to every individual. It is enjoyed both by public officials and military personnel. However, there may be special restrictions on the exercise of that right.

221. Article 13 of the Act concerning the status of public officials, dated 30 June 1927, guarantees officials freedom to form associations "within the limits laid down by the Constitution". Originally, however, this article contained a number of special restrictions. It prohibited public officials "from belonging to an association which makes use of, or anticipates making use of, strikes by public officials" or which pursues objectives which are unlawful or dangerous to the State. The article also empowered the Federal Council to establish a list of the

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[70] Ruling of the Federal Tribunal dated 23 March 1995, Second Court of Public Law (not yet published).

associations falling within that definition.[71] As a result of an amendment to the Act, which came into force on 1 July 1987, these restrictions were abolished. Today article 13 merely prohibits public officials from "belonging to an association whose purposes or means are unlawful or dangerous to the State. The Federal Council is entrusted with the implementation of this provision." Thus this restriction no longer goes any further than the restrictions already established under article 56 of the Constitution.

222. However, freedom of association of public officials may at all times be made subject to specific restrictions on the grounds of their duty of allegiance to the State. This duty imposes limitations on fundamental rights arising from the weighing of the interests of the requirements of public service against the freedoms of the individual official. The content of the duty of allegiance is spelt out in articles 22, 24 and 27 of the Act. In particular, a public official must refrain from "anything prejudicial to the interests of the Confederation" (art. 22); he must "show himself worthy of the consideration and the confidence required by his official position" (art. 24);[72] and he is bound by professional secrecy (art. 27). In practice the scope of the admissible limitations depends on the rank and the duties of the official concerned and must respect the principle of proportionality. As a general rule the Federal Tribunal accepts that an official may no longer claim to exercise his or her functions if his or her membership of a political group raises doubts regarding his or her reliability and if there are good reasons to fear that such membership may cause the official to violate the secrecy of his or her office.[73]

223. The Act will be subjected to a comprehensive review in the near future. Within the context of that review the provisions relating to the duty of allegiance should be re-examined.

224. Serving military personnel also enjoy freedom to form associations, but the exercise of that right may be made subject to certain restrictions; these relate to freedom of assembly rather than to freedom to form associations. The new service regulations stipulate that "military personnel are prohibited:

- During on-duty and off-duty hours;
- Within the ambit of the Community;
- Whilst in uniform;

from organizing political meetings and demonstrations and from organizing propaganda campaigns of any nature whatsoever" (Service Regulations 1995, section 96, paragraph 3).

225. However, in application of the principle of proportionality, restrictions on the exercise of freedom to form associations must be assessed bearing in mind the position and rank of the individual concerned and the circumstances of the case (on or off duty).

226. Under the Military Penal Code any person who founds a group seeking to undermine military discipline, who belongs to such a group or associates himself with its activities, who incites the establishment of such a

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[71] The Federal Council made use of this power in 1932 and 1937, when it issued two orders prohibiting public officials from belonging to the communist party or anyof its subsidiary organizations. These orders were repealed in 1945.

[72] Originally this article extended this obligation to non-working time as well. That provision was abolished when the Act was amended on 19 December 1986.

[73] ATF 99 Ib 138.

movement or who complies with its instructions is punishable by imprisonment. This article is applicable even if the undermining of military discipline is only a secondary objective of the association in question. It may also be applicable to civilians if they are subject to the Military Penal Code (art. 2 of the Code). This article might possibly have an impact on the trade union activities of serving military personnel. In practice, no case of this kind has come to light.

2. Restrictions on the right to strike

227. Public officials are prohibited under federal legislation from striking. Article 23 of the Act concerning the status of public officials prohibits them "from going on strike or encouraging other officials to do so". This prohibition also applies to salaried employees and manual workers in the employ of the Confederation,[74] heads of the military supply authorities[75] and persons under private-law contracts with the Confederation. An official contravening this prohibition is liable to disciplinary penalties ranging from a reprimand to dismissal.

228. At cantonal level, there are three types of legal framework. Some cantons expressly prohibit officials from going on strike.[76] Others have no legal provisions on the subject; in such cases the right to strike may be considered as guaranteed.[77] Only the canton of the Jura expressly recognizes the right to strike in the public service.[78]

229. The ban on the right of public officials to strike derives from the nature of the public-law relationship between the official and the State. As the result of this special relationship an official who fails to discharge the obligations attaching to his function is acting against the community as a whole. Thus the prohibition of strike action rests on a broad interpretation of the concept of the duty of allegiance.

230. The prohibition of the right of public officials to strike is criticized both by a certain number of legal scholars and by the majority of the public service staff associations, and its compatibility with Switzerland's international obligations is being called into question. The legislation governing the status of public officials will shortly be subjected to a comprehensive review; this should permit reconsideration of this general prohibition in the light of the requirements of international law, and in particular of this Covenant.

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[74] See article 25 of the Regulations concerning salaried employees, dated 10 November 1959.

[75] Article 13 of the Order of 10 March 1969 concerning legal status.

[76] The cantons of Bern, Grisons, Fribourg, Lucerne, Neuchâtel and Valais.

[77] See, for example, a ruling of the Geneva Administrative Tribunal, dated 29 August 1984. See also Charles-Albert Morand, *Le droit de grève dans tous ses états* (The right to strike in utter confusion), in "*Melanges Alexandre Berenstein, Le droit social à l'aube du XXIème siècle*" (Social legislation at the dawn of the twenty-first century), Payot, Lasanne, 1989, p. 62.

[78] Article 20 (g) of the Constitution of the Jura states that "to ensure worker protection the State recognizes the right to strike; the public services in which it may be regulated shall be determined by law". The legislation on the subject has not yet been adopted.

IX. ARTICLE 9: RIGHT TO SOCIAL SECURITY

A. Principal instruments applicable

231. The following are the principal instruments applicable:

(a) International instruments:

ILO Convention concerning Minimum Standards of Social Security, 1952 (No. 102), ratified in 1977;[79]

ILO Convention concerning Invalidity, Old-Age and Survivors' Benefits, 1967 (No. 128), ratified in 1977;

ILO Convention concerning Employment Promotion and Protection against Unemployment, 1988 (No. 168), ratified in 1990;

(b) National instruments:[80]

(i) Medical care and cash benefits in the event of illness:

Federal Constitution, article 34 *bis*;

Loi fédérale sur l'assurance-maladie (Federal Act concerning sickness insurance) (LAMA), dated 13 June 1911;

(ii) Maternity benefits:

Federal Constitution, article 34 *quinquies*, figure 4;

(iii) Old-age, survivors' and disability benefits:

Federal Constitution, article 34 *quater*;

Loi fédérale sur l'assurance-vieillesse et survivants (Federal Act concerning old-age and survivors' insurance) (LAVS), dated 20 December 1946;

Loi fédérale sur l'assurance-invalidité (Federal Act concerning disability insurance) (LAI), dated 19 June 1959;

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[79] Switzerland has accepted the following five branches of benefits:
- Old-age benefits;
- Benefits in the event of industrial accidents or occupational diseases;
- Family benefits;
- Disability benefits;
- Survivors' benefits.

[80] The Sickness Insurance Act (LAMal) of 18 March 1994 and the tenth revision of the LAVS are appended.

Loi fédérale sur les prestations complémentaires à l'assurance-vieillesse, survivants et invalidité (Federal Act concerning old-age, survivors' and disability supplementary benefits) (LPC) , dated 19 March 1965;

Loi fédérale sur la prévoyance professionnelle vieillesse, survivants et invalidité (Federal Act concerning old-age, survivors' and disability occupational insurance) (LPP), dated 25 June 1982;

(iv) Benefits relating to industrial accidents:

Federal Constitution, article 34 *bis*;

Loi fédérale sur l'assurance-accidents (Federal Act concerning accident insurance) (LAA), dated 20 March 1981;

(v) Unemployment benefits:

Federal Constitution, article 34 *novies* and article 34 *ter*, letters (a) and (e);

Loi fédérale sur l'assurance chômage-obligatoire et l'indemnité en cas d'insolvabilité (Federal Act concerning compulsory unemployment insurance and indemnities in the event of insolvency) (LACI), dated 25 June 1982;

Ordonnance du Conseil fédéral sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité (Order of the Federal Council concerning compulsory unemployment insurance and indemnities in the event of insolvency) (OACI), dated 31 August 1983;

(vi) Family benefits:

Federal Constitution, article 34 *quinquies*;

Loi fédérale sur les allocations familiales dans l'agriculture (Federal Act concerning family allowances in agriculture) (LFA), dated 20 June 1952.

B. General

232. The different branches of social security in Switzerland provide all the benefits mentioned in the guidelines for the preparation of the report, namely:

- Medical care;
- Cash benefits in the case of illness;
- Old-age benefits;
- Disability benefits;
- Survivors' benefits;
- Benefits in the case of industrial accidents and occupational diseases;
- Unemployment benefits;
- Family allowances.

The maternity benefits are currently granted in accordance with the Federal Sickness Insurance Act (LAMA); draft legislation on maternity insurance dealing with cash benefits should shortly be placed before Parliament.

233. A special feature of Swiss social security legislation is that the population groups covered by the laws differ from one branch of insurance to another. Thus, sickness insurance is based on the individual and takes no account of gainful activity; insurance against industrial accidents and occupational diseases is compulsory, but only for employees; old-age, survivors' and disability insurance (basic insurance, also known as "first pillar") is universally applicable and compulsory for all persons working or domiciled in Switzerland. The occupational insurance coverage (known as "second pillar") is only compulsory for employees, and then only if their remuneration exceeds a certain threshold.

234. Swiss social security is the fruit of an historical process of evolution, whereby the system has been built up, step by step, in a pragmatic manner. This approach has been due primarily to federalism: before the Confederation acquired competence to legislate, that power resided with the cantons, and the transfer of competence in the area of social insurance, a process begun in 1890, was not completed until 1976. The second factor accounting for the gradual shaping of the social security system has been direct democracy and its two tools—popular initiative and optional referendum. Popular initiative has mainly had an indirect effect, in that it has encouraged Parliament to legislate, whereas the referendum has played a direct role, and many laws have been rejected by the people in popular votes.[81]

235. The question of harmonizing the social insurance system was reopened in 1985 by a parliamentary initiative.[82] Priority has been given, however, to revisions of the various acts on sickness insurance, on old-age and survivors' insurance, and on unemployment insurance.

Table 8. Social insurance expenditure in millions of francs

	AVS[83]	PC-AVS	AI	PC-AI	PP	AM	AA	AC
1980	10,726	343	1,374	72	3,458	5,677	...	153
1985	14,417	570	1,821	132	...	8,416	1,797	698
1990	18,277	1,124	2,376	309	8,737	12,199	2,567	502
1991	19,637	1,279	2,601	359	9,700	13,700	2,924	1,340
1992	21,129	1,468	2,888	426	...	...	...	3,461

Source: Federal Social Insurance Office.

[81] The first Accident and Disability Insurance Act was rejected in 1900, as was the first Old-age and Survivors' Insurance Act in 1931. The draft Maternity Insurance Act suffered the same fate in 1987. Attempts to amend the Sickness Insurance Act were rejected by popular vote in 1974 and 1987. The new Sickness Insurance Act (LAMal) of 18 March 1994 was passed by popular vote on 4 December 1994.

[82] Cf. Parliamentary initiative: general part concerning social insurance law, report by the Commission of the Council of States, 27 September 1990.

[83] AVS: Old-age and survivors' insurance; AI: disability insurance; PC: supplementary benefits (supplementary to AVS/AI); PP: occupational insurance; AM: sickness insurance; AA: accident insurance; AC: unemployment insurance.

Table 9. Percentage of GDP allocated for social insurance benefits

1970	1980	1985	1990	1991	1992
8.5	13.2	14.4	14.1	14.9	16.4

Source: Federal Social Insurance Office.

C. Medical care

236. Article 34 *bis* of the Federal Constitution lays down that the Confederation shall introduce legislation to provide for insurance against accident or illness, taking account of the existing relief funds. It may make participation in such insurance arrangements compulsory for all or for certain categories of citizens. Sickness insurance was introduced by the Federal Sickness Insurance Act (LAMA) of 13 June 1911, which came into effect on 1 January 1914. Despite the weaknesses inherent in its very specific design (it is in fact merely an outline act on subsidization), this act has undergone only one substantial partial revision, in 1964, all other attempts at amendment having failed. In recent years, the Government has decided to take the matter up again by proposing an amendment dealing, in particular, with insurance relating to care. It therefore tabled a new draft Sickness Insurance Act (LAMal), which was passed by Parliament on 18 March 1994. Following a popular referendum organized against this revision, it was finally passed by the people in a popular vote on 4 December 1994. The new act will come into force on 1 January 1996.

237. The following paragraphs set out the status of sickness insurance in current legislation. We also indicate the main features of the new regime that will replace it as from 1 January 1996, reserving the right to provide greater detail in subsequent reports.

1. Population coverage

238. Sickness insurance is optional at the federal level. Every individual residing in Switzerland has the option of taking out sickness insurance, regardless of whether he or she is engaged in gainful activity. However, the cantons have competence to make such insurance compulsory for all or part of their population. Several cantons have used this possibility for certain categories of individuals (particularly the elderly) and seven cantons have made sickness insurance compulsory for all residents. At present, virtually the entire resident population of Switzerland is insured. Furthermore, sickness insurance is based on the principle of individual insurance, and insurance taken out by the head of the family does not cover the other family members.

2. Nature and level of benefits

239. With regard to insurance for medical and pharmaceutical care, the sickness insurance funds (the institutions that administer sickness insurance) must provide at least for the items indicated below (LAMA, art. 12, para. 2).

240. In the case of **out-patient treatment**:

(a) Care provided by a physician: this covers any scientifically recognized diagnostic or therapeutic measure. The measures selected must also be appropriate and cost-effective;

(b) Scientifically recognized treatments provided by approved paramedical staff, based on a physician's prescription (e.g. physiotherapists, nurses, ergotherapists);

(c) Medicines and tests ordered by a physician: these are grouped together in a list of medicines with the prices indicated (the list enumerates the medicines, dressings and tests conducted by pharmacists or laboratories for which the sickness insurance provides compulsory coverage), and in the list of speciality products (which indicate the speciality products and specially prepared medicines that the funds are recommended to cover);

(d) Care provided by a chiropractor.

241. Treatment in a **hospital establishment**:

(a) Benefits fixed by agreement between the establishment and the insurance fund, covering at least the care provided by the physician, including scientifically recognized treatments;

(b) Medicines and tests, in accordance with the charges for the general ward, as well as a minimum daily contribution of nine francs to cover other care.

242. In the case of **spa treatment** ordered by a physician, a daily contribution of at least 10 francs to cover treatment costs.

243. Under the LAMA (article 14, paras. 1 and 2) the fund must provide the same benefits for **pregnancy and childbirth** as for illness if, at the time of confinement, the insured woman has already had coverage for at least 270 days with no interruption exceeding three months. Benefits for women insured for medical and pharmaceutical care must also cover the following:

(a) In the case of a home confinement:

(i) Attendance at the birth by a midwife and all necessary equipment;

(ii) Attendance at the birth by a physician;

(b) In the case of confinement in a hospital establishment: the fund must pay a contribution to the confinement fee where this is charged by the hospital. The fund must also contribute to the cost of the infant's care while it is in the hospital establishment with its mother, or the cost of the infant's care and treatment if it requires hospital treatment during the 10 weeks following birth;

(c) A maximum of four check-ups during pregnancy and an examination within 10 weeks of confinement.

244. Out-patient treatment and medical and pharmaceutical care must be covered with no time-limit (art. 12, para. 3, LAMA). In the event of treatment in a hospital establishment or spa treatment, medical and pharmaceutical care must be covered, for one or more illnesses, for at least 720 days out of a period of 900 consecutive days. In the case of hospital treatment for tuberculosis, benefits must be paid for at least 1,800 days out of a period of seven consecutive years. No period of time may be offset against the period of benefit entitlement as long as the insured person is in receipt of an invalidity allowance or payment under his disability insurance, or as long as an under-age insured person not in receipt of disability insurance benefits remains, with no long-term interruption, in a hospital establishment after having received hospital treatment for 360 consecutive days (art. 12, para. 4, LAMA).

3. Funding

245. Sickness insurance is funded according to the principle of the distribution of costs. Funding comes from the contributions made by the insured persons, who also contribute to covering the costs (annual excess and premium), and from subsidies to the sickness funds allocated by the Confederation and the cantons. The contributions paid by the insured persons are not fixed in relation to their income, but depend on the sickness fund chosen, the age at which the insured person joins the fund and the insurance cover provided. The 1911 Act did not, in fact, provide for an actual social insurance system for sickness, but merely set minimum requirements to be fulfilled by funds wishing to obtain financial support from the Confederation. Each sickness fund forms an independent community of risks. The risks are not distributed uniformly from one fund to another. A large proportion of young people or relatively young men entails fewer costs for the funds than larger numbers of older people or women. Consequently, there are differences in risk structure from one fund to another that can lead to differences, which may be considerable, in contribution levels. As of 1 January 1993, the sickness funds with a large number of women or older people in their membership receive contributions from the sickness funds with smaller numbers of such persons (this system being designed to equalize the risks).

246. Sickness insurance funding also places a heavy burden on the lower incomes: the contributions are fixed per head and the federal subsidies are distributed regardless of the income levels of the insured persons. While subsidies are provided by several cantons to reduce the contribution burden on those with lower incomes, there is no global concept of income-based subsidies.

247. The funds' financial independence also gives rise to gaps in insurance cover. In a system of this kind, every new insured person is seen as an additional risk that the fund must assume by itself. This is why fund regulations set a maximum joining age. The funds are also authorized to impose restrictions, i.e. to exclude from insurance cover illnesses which either exist at the time of joining or occurred before joining and are liable to recur. However, the law stipulates that restrictions are to be lifted within five years at most.

D. Cash benefits in the event of sickness

248. Cash benefits in the event of sickness or daily allowance (sick pay) are granted in accordance with the LAMA.[84]

1. Population coverage

249. Under federal law, the provision of a daily allowance in the event of sickness is optional. An insurance obligation may, however, result from collective labour agreements or standard employment contracts. In Switzerland, persons insured for a daily allowance under the LAMA account for only 48.4 per cent (1992 figure) of the resident population.

2. Nature and level of benefits

250. Under insurance providing for a daily allowance, the sickness funds must allocate a daily allowance of at least two francs in the event of total incapacity for work (art. 12 *bis*, para. 1, LAMA). Under collective insurance arrangements (the sickness funds may be authorized by the supervisory authority to conclude contracts for the insurance of groups of individuals), the daily allowances are generally fixed as a percentage of the person's wage. The daily allowance must be paid for one or more illness for at least 720 days in a period

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[84] It should be noted that, if an employee falls ill, the employer is required to pay his wage for a limited period (art. 324a CO).

of 900 consecutive days and, in the case of tuberculosis, for at least 1,800 days in a period of seven consecutive years.

251. The period of maternity benefit is 10 weeks, including at least six after confinement. This period may not be offset against the periods indicated above, and the maternity benefits must be granted even if the sickness benefit periods have expired (art. 14, para. 6, LAMA).

3. Funding

252. Insurance providing for a daily allowance is funded primarily by the contributions by the insured persons and possibly by employers, pursuant to an employment contract or a collective labour agreement (CCT). Subsidies granted by the Confederation are provided only for daily allowances paid in respect of confinement or tuberculosis.

E. Main features of the new Sickness Insurance Act (LAMal) of 18 March 1994

253. The new provisions relate essentially to "insurance for care" (medical and pharmaceutical care). The main aim is to increase solidarity. The LAMA envisages "per capita" premiums. In principle, this system is maintained, in that the premiums will always be individual. However, by introducing a single premium per fund in a given region for adults, the LAMal eliminates the differences in premium based on a person's age on joining the fund or on sex, as well as the special premiums for collective agreements. Furthermore, a number of measures (free transfer for insured persons; equalization of risks among insurers for a period of 10 years) are envisaged not in order to avoid the need to eliminate all differences in premium among insurers, but in order to limit the difference to the proportion necessary for effective insurance practice. All these measures, which are designed to strengthen solidarity, give rise to an obligation to take out insurance, which has therefore been introduced at the federal level.

254. The Act, which will come into force on 1 January 1996, includes both measures to reduce demand (increased participation in costs, possibility of choosing other insurance models, etc.) and measures to limit supply (hospital planning by the cantons, increased participation by the cantons in hospital costs, large-scale introduction of the medical consultant system, etc.). It stresses contractual freedom, increased competition and the personal responsibility of the insurers and the benefit providers to fix tariffs and prices, but it also envisages control mechanisms. The basic idea is that it is up to the cantons, care providers, insurers and insured persons to avail themselves of the "regulatory" instruments available to them. Should this not be the case, there is scope for the cantons to intervene (budget capping for hospitals, freezing of tariffs).

255. This Act also gives effect to the requests made, for a number of years now, for extending benefits by, for example, removing all limits on their duration in cases of hospitalization (under the LAMA, the obligation to pay benefits relates, in principle, to two years or 720 days) and assuming rehabilitation costs. Furthermore, care provided outside the hospital will be more fully reimbursed. Certain prophylactic measures are included in the catalogue of benefits. Under the Act, health promotion, i.e. general sickness prevention, devolves on the insurers, in conjunction with the cantons.

256. Insurance for medical care will continue to be funded by the individual premiums and by the insured persons' participation in costs, which now extends to hospital treatment, and also by the subsidies provided by the public authorities (cantons and Confederation). Such subsidies, however, will no longer automatically be applied to all insured persons without reference to their financial situation, but will help to reduce the premiums of lower-income insured persons. In general terms, by extending the compulsory benefits and eliminating direct subsidies to the funds, the system will entail a single increase in premiums in 1996. However, the new procedure

for subsidies will make it possible to balance the situation in that the premiums paid by the insured persons will be reduced according to their financial situation. The financial consequences will therefore not be the same for all insured persons.

257. Social sickness insurance consists not only of insurance for medical care, but also of insurance in the form of daily allowances (insurance for loss of income). Since Parliament and the people have already refused to introduce compulsory insurance providing daily allowances for workers, it has not been proposed again. This is why virtually all of the provisions of the LAMA have been retained in this regard, except for the period of payment of maternity benefits, which has been increased to 16 weeks, as against 10 weeks in the LAMA.

F. Old age, survivors' and disability benefits

258. Article 34 *quater*, paragraph 1, of the Federal Constitution lays down that "the Confederation shall take appropriate measures to promote adequate insurance for old age, death and disability. This cover is based on federal insurance, occupational insurance and individual insurance." Old-age, survivors' and disability cover is thus provided in Switzerland by the so-called "three-pillar" system.

1. Basic federal, old-age, survivors' and disability insurance ("first pillar")

259. As far as basic old-age, survivors' and disability insurance is concerned, article 34 *quater*, paragraph 2, of the Federal Constitution obliges the Federation to bring in legislation establishing old-age, survivors' and disability insurance, compulsory for the entire population, which must provide benefits in cash and in kind and pay pensions that are adequate for the needs of daily life. In Switzerland, this is referred to as the "first pillar".

260. The old-age and survivors' insurance branches are governed by the federal Old-Age and Survivors' Insurance Act (LAVS) of 20 December 1946. It has undergone several revisions since it came into force on 1 January 1948. The latest revision (the tenth) was adopted by Parliament on 7 October 1994. It involved a fundamental reworking of the system in that it abandoned the concept of the couple's pension in favour of individual pensions with, as a corollary, the splitting of income earned during the marriage as a basis for assessing pensions. The revision contains many other features, including an increase in the retirement age for women. This particular point prompted a referendum which would have had the effect, had it been accepted by popular vote, of cancelling out the entire revision. In an effort to avoid this, some political groupings have launched constitutional initiatives to block the increase in the retirement age for women, while retaining the improvements provided by the tenth revision.[85]

261. The disability insurance branch is governed by the federal Disability Insurance Act (LAI) of 19 June 1959, which came into force on 1 January 1960. The LAI has been amended three times and the most recent amendment, which was purely administrative, came into effect on 1 January 1992.

262. What follows is an outline of the situation in the light of current legislation. We shall examine the main features of the tenth LAVS revision, which will come into effect on 1 January 1997. Since the system for assessing pension payments is identical in the AVS and in the AI, the new pension system introduced by the tenth LAVS revision also covers the disability branch.

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[85] The tenth AVS revision was passed by popular vote on 25 June 1995.

(a) Population coverage

263. Persons domiciled in Switzerland, persons who carry on a gainful activity in Switzerland and Swiss citizens who work abroad for an employer in Switzerland and are remunerated by that employer are insured, on a compulsory basis, under these two Acts (art. 1, para. 1, LAVS and art. 1 LAI). Under certain conditions, Swiss citizens residing abroad may take out optional insurance (art. 2 LAVS).

(b) Nature and level of benefits

264. The LAVS and LAI envisage different sorts of benefits.

(i) Pensions (ordinary and extraordinary)

265. Pensions based on contributions are deemed to be ordinary allowances, as opposed to extraordinary ones, which are not dependent on contributions and are generally assessed according to the beneficiary's means.

Old-age pension

266. The old-age pension is subdivided as follows: single person's old-age pension (art. 21 LAVS); couple's old-age pension (art. 22 LAVS); wife's supplementary pension (art. 22 *bis* LAVS); and child's pension (art. 22 *ter* LAVS).

267. The single-person's old-age pension is granted to women over 62 years of age and men over 65 years. The couple's old-age pension is granted to a married man over 65 years of age whose wife is over 62 years of age or is disabled within the meaning of the Disability Insurance Act. The old-age couple's pension is 150 per cent of the single-person's old-age pension that the insured person could have obtained if the conditions of entitlement to a couple's old-age pension were not fulfilled. A married man in receipt of a single-person's old-age allowance is entitled to a supplementary pension for his wife if she is over 55 years of age but under 62 years of age or if he qualifies for a supplementary pension for his wife under disability insurance. The supplementary pension is 30 per cent of the single person's old-age pension to which the insured person is entitled. Finally, a person who is in receipt of an old-age pension under the AVS is entitled to a pension for each child who, on the death of the person concerned, would have been entitled to an orphan's pension. The child's pension is 40 per cent of the single person's old-age pension to which the insured person is entitled.

Survivors' pension

268. The survivors' pension is subdivided as follows: widow's pension (art. 23 LAVS); partial orphan's pension (art. 25 LAVS); full orphan's pension (art. 26 LAVS).

269. A widow is entitled to a widow's pension if she has one or more children on the death of her husband. Under certain conditions she may also claim such a benefit if other children were living as dependants in the household before her husband died. Finally, she is entitled to draw a widow's pension if, on the death of her husband, she has no children but is over 45 years of age and had been married for at least five years. The widow's pension is 80 per cent of the single person's old-age pension corresponding to the amount taken into account, in respect of average annual income.

270. A child one of whose parents has died is entitled to a partial orphan's pension. A child whose parents have both died is entitled to a full orphan's pension. The partial orphan's pension and the full orphan's pension are 40 per cent and 60 per cent, respectively, of the single person's old-age pension corresponding to the amount taken into account in respect of average annual income.

Table 10. Beneficiaries of AVS pensions

Years	Old-age				Survivor			
	Single person's pension			Couple's pension	Widow	Orphan with mother	Orphan (no parent)	Total
	Men	Women	Total					
1980	148,622	428,473	577,095	226,454	69,336	61,406	1,497	132,239
1985	155,710	469,190	624,900	239,145	75,081	57,675	1,464	134,220
1990	165,617	512,909	678,526	273,431	74,651	47,211	1,061	122,923
1991	167,236	522,061	689,297	280,715	74,063	45,414	1,017	120,494
1992	169,348	531,254	700,602	287,699	73,700	44,180	968	118,848

Source: Federal Social Insurance Office.

Disability pension

271. In order to claim a disability pension, the individual must be insured at the time of the contingency. From the age of 18 years, the insured person is entitled to a pension if he is at least 40 per cent disabled.[86] The disability pension is graded according to the degree of disability: an insured person who is at least 40 per cent disabled is entitled to a quarter of the pension, an insured person with a disability of at least 50 per cent to half of the pension, while an insured person with a disability of at least 66⅔ per cent receives the full pension.

272. The disability pension is subdivided as follows: single person's disability pension (art. 32 LAI); couple's disability pension (art. 33 LAI); wife's supplementary pension (art. 34 LAI); child's pension (art. 35 LAI).

273. Disabled men and women are entitled to a single person's disability pension where there is no entitlement to a couple's disability pension. The couple's disability pension (150 per cent of the single person's pension) is granted to a disabled man whose wife is also disabled within the meaning of the LAI or is over 62 years of age. The couple's pension may take the form of a full pension, a half-pension or a quarter-pension and is calculated on the basis of the degree of disability of the more seriously disabled spouse. The husband is entitled to a full pension if his wife is over 62 years of age.

274. A disabled husband who is not entitled to the couple's pension is entitled to a supplementary pension for his wife (30 per cent of the single person's pension). Men and women who may claim a disability pension are entitled to a pension for each of the children who, on the death of their parents, would be entitled to an AVS orphan's pension. Children who would be entitled to a partial orphan's pension are thus eligible for a child's single person's pension (40 per cent of the single person's pension); those who would be entitled to the full orphan's pension are eligible for the child's full pension (60 per cent of the single person's pension).

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[86] According to the LAI, disability is deemed to be a reduction in income-earning capability, assumed to be permanent or long-lasting, which is the result of an impairment of physical or mental health due to a congenital infirmity, an illness or an accident. Insured adults not engaged in gainful activity are deemed to be disabled if their health impairment prevents them from carrying on their normal work. Insured minors not engaged in gainful activity are deemed to be disabled when their physical or mental health impairment will probably deprive them of the ability to earn an income.

Ordinary old-age, survivors' and disability pensions

275. The ordinary pension is payable to persons who have paid contributions for at least one full year, as well as to their survivors (art. 29, para. 1, LAVS and art. 36, para. 1, LAI). However, nationals of a country with which Switzerland has not concluded a social security agreement, as well as their survivors, are nevertheless entitled to an ordinary AVS pension, provided that they have civil domicile in Switzerland and normally reside there and that, before the occurrence of the insurance contingency, they (i.e. the deceased insured person in the case of survivors) have paid contributions for at least 10 full years (art. 18, para. 2, LAVS). If the ordinary AI pension is to be granted, such persons must fulfil the same conditions as for the granting of the AVS pension or have had their civil domicile in Switzerland for an uninterrupted period of 15 years and have paid contributions for at least one full year (arts. 6 and 36 LAI).

276. The amount of the ordinary AVS or AI pensions is calculated, firstly, according to the period of contribution (contributory service) and, secondly, on the basis of the amount taken into account in respect of the average annual income of the insured person ("reference average annual income", obtained by dividing the total income on which the contributions have been paid by years of contributory service). The ordinary old-age or disability pension for a couple is calculated on the basis of the reference average annual income of the husband plus any income earned by the wife. The survivors' pensions are calculated on the basis of the reference average annual income for the couple's old-age pension.[87] The ordinary pensions are paid in the form of full pensions to the insured persons who completed their contributory service[88] or partial allowances to insured persons who have not completed their contributory service. The single person's old-age or disability monthly pension is made up of a certain proportion of the minimum amount of the single person's old-age pension (fixed amount) plus a certain proportion of the reference average annual income (variable amount). The minimum pension is payable when the reference average annual income is no greater than 12 times the pension, and the maximum pension (double the amount of the minimum pension) is granted when the reference average annual income is at least 72 times the amount of the minimum allowance. Currently, the minimum single person's full old-age or disability pension amounts to 975 francs per month, whereas the maximum single person's full old-age or disability pension amounts to 1,940 francs per month (as at 1 January 1995).

277. The LAVS and LAI contain special provisions for the calculation of average annual income which are designed to increase the income of certain categories of person. This applies, for example, in the assessment of ordinary pensions under the AI, to calculation of the average annual income of persons who become disabled before the age of 45 years. Furthermore, if an insured person who has completed his contributory service is under the age of 25 years when the disability occurs, the LAI lays down that the disability pension due to him and any supplementary pension shall be at least 133⅓ per cent of the minimum amount of the corresponding complete pension. Lastly, in order to calculate a single person's old-age or disability pension payable to a divorced woman, the woman may apply for a child-rearing bonus equivalent to three times the minimum single person's old-age pension for the years during which the divorced woman exercised parental authority over children under the age of 16 years.

278. In order to assess the ordinary pension, the total income from gainful activity is recalculated using a recalculation coefficient that corresponds to the average increase in wages and prices recorded between the first

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[87] The partial orphan's pension granted in the event of the death of the mother is calculated on the basis of the mother's income from gainful activity and years of contributory service.

[88] In other words, when the insured person has completed his contributory service between 1 January of the year following the date on which he reached 20 years of age and the commencement of entitlement to the AVS or AI pension.

relevant entry in the individual account of the insured person and the year preceding that of the commencement of entitlement to the pension. The coefficients are fixed for each current calendar year.

Extraordinary old-age, survivors' and disability pensions

279. Swiss citizens domiciled in Switzerland who are not entitled to an ordinary pension or whose ordinary pension is less than the extraordinary pension are entitled to a so-called "extraordinary" pension, provided that an amount calculated by taking two thirds of their annual income and adding to it a reasonable share of their wealth does not exceed the reference income limits, namely 14,800 francs for unmarried persons and widows, 22,200 francs for couples and 7,400 francs for orphans (as at 1 January 1995). In certain situations,[89] the extraordinary pension may be granted irrespective of these income limits. The annual extraordinary pension is reduced if, when it is added to the income and to the share of wealth to be considered, the total exceeds the reference income limits. If it has not been reduced as a result of these factors, the amount of the extraordinary pension is equal to the minimum amount of the full ordinary pension payable to that person.

Updating of pensions

280. The Federal Council updates the ordinary pensions, as a general practice, every other year in time for the beginning of the calendar year, in accordance with wage and price increases. It does this earlier if the Swiss consumer price index increases by more than 4 per cent in any given year.

(ii) Other LAVS benefits

281. Recipients of an old-age pension who have their domicile and habitual residence in Switzerland and who suffer from serious or moderate invalidity are entitled to an **invalidity allowance** (art. 43 *bis*, para. 1, LAVS). Those already receiving an invalidity allowance under their disability insurance continue to draw an AVS invalidity allowance, even if the degree of invalidity is slight. The invalidity allowance amounts to 80 per cent of the minimum amount of the single person's old-age pension in the case of serious invalidity; 50 per cent of that amount in the case of moderate invalidity; and 20 per cent of that amount in the case of slight invalidity.

282. A widow who, on the death of her spouse, does not fulfil the conditions for receiving a widow's pension is entitled to a **single allowance** (art. 24 LAVS). The amount of the payment ranges from double the annual widow's pension to five times that amount, according to the length of the marriage and the woman's age when she is widowed.

283. Persons receiving an AVS old-age pension who are domiciled in Switzerland and who require expensive appliances to enable them to enjoy mobility, to establish contact with those around them or to ensure their independence are entitled to **auxiliary support** (art. 43 *ter*, para. 1, LAVS).

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[89] In practice, this refers to a married woman whose husband has completed his contributory service until the husband becomes eligible for a couple's old-age allowance, a woman who divorces after reaching 61 years of age and has a full period of insurance but, having been exempted from payment of contributions through never having carried on any gainful activity during her marriage, does not have the minimum contributory service needed to obtain the ordinary pension, as well as, in the case of AI pensions, a person who has become disabled before 1 December of the year following the year of his or her twentieth birthday (in this specific case, the extraordinary pension amounts to 133.3 per cent of the minimum amount of the full ordinary pension for that person).

(iii) Other LAI benefits

284. Insured persons who, as a result of impairment of their health, are totally or partially incapable of engaging in gainful activity are entitled to the AI benefits if their incapacity is likely to be permanent or long-term. The AI seeks, in the first instance, to rehabilitate or return insured persons to an active life. This is why it initially grants **rehabilitation measures** (see below). An AI pension is paid only if the rehabilitation measures do not have the desired effect, whether wholly or in part, or if they clearly have no chance of success from the outset. Entitlement to such benefits ceases at the latest at the end of the month during which a woman has her 62nd birthday or a man his 65th birthday, i.e. when the insured person reaches the age of old-age pension entitlement.

285. With reference to rehabilitation measures of a vocational nature, the AI provides the following (arts. 15 to 18 LAI):

(a) Vocational guidance for insured persons whose disability makes it difficult for them to carry on their previous activity or to choose an occupation;

(b) Initial vocational training for insured persons who have not yet had a gainful occupation and whose initial vocational training has given rise, because of their disability, to costs far higher than those for the non-disabled; initial vocational training may also encompass preparation for auxiliary work or an activity carried on in a sheltered workshop, training in a new occupation for insured persons who, after becoming disabled, have undertaken, at their own initiative, an inappropriate occupational activity that could not reasonably be continued and further vocational training in cases where it could appreciably improve the insured person's earning capacity;

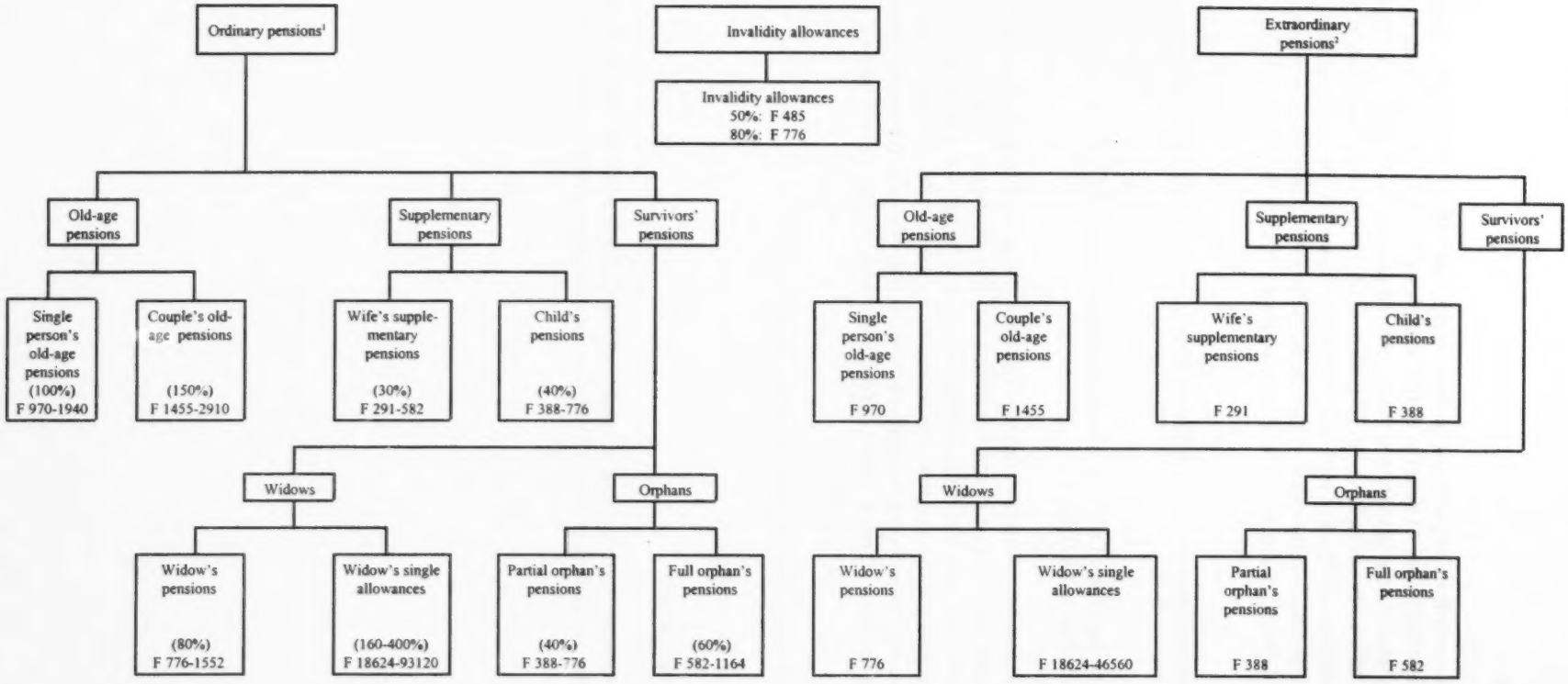
(c) Transferral to a new occupation, if necessitated by the disability;

(d) Re-training in the same occupation;

(e) Search for an appropriate job;

(f) Financial start-up assistance, under certain conditions, to enable the insured person to undertake or develop an activity as a self-employed worker, and to cover the cost of changes to the workplace necessitated by the disability.

Table 11. Types and monthly amounts of AVS pensions in 1995



Source: Federal Social Insurance Office.

[1] Ordinary pensions are paid as full or partial pensions; the amounts set out above are the minimum and maximum amounts of the full pensions.

[2] Extraordinary pensions not subject to reduction are the same as the corresponding full ordinary pensions.

286. In addition to these vocational measures, the AI envisages other types of rehabilitation measures; these include, in the first instance, medical care not designed to treat the affliction as such but directly required for occupational rehabilitation and designed to bring about a lasting and considerable improvement in earning capacity or ensure that it is not seriously reduced (art. 12 LAI). Furthermore, minors suffering from a congenital disability qualify for special conditions. The AI covers all the medical care they need to treat the congenital disability, irrespective of the individual's future earning capacity (art. 13, para. 1, LAI). The AI provides for subsidies for special school training for minors, who, although teachable, cannot, owing to the disability, attend a normal State school or be expected to do so (art. 19 LAI). Special schooling includes education proper, as well as, in the case of minors who are incapable or hardly capable of assimilating the basic school subjects, measures designed to develop either their manual dexterity or their ability to cope with ordinary everyday tasks or to help them establish contact with those around them. Disabled minors who have completed their second year and have not been placed in an establishment providing the medical care envisaged in the AI, initial vocational training under the AI, special school training measures under the AI, or auxiliary support, are entitled to a contribution to any special care they receive.

287. Insured persons are also entitled to the **auxiliary support** required to carry on a gainful occupation or their usual work, to study or to learn a trade, or for everyday functional tasks (art. 21, para. 1, LAI).

288. As from the age of 18 years, the insured persons are entitled to a **daily allowance** during rehabilitation if the rehabilitation measures prevent them from engaging in gainful activity for at least three consecutive days or if, in their normal activity, they have at least 50 per cent incapacity for work. A daily allowance is paid to insured persons who are undergoing initial vocational training, and also to insured minors who have not yet engaged in gainful activity if they suffer a loss of potential earnings because of their disability (art. 22, para.1, LAI).

289. Disabled insured persons domiciled in Switzerland who have a low, moderate or serious level of invalidity are also entitled to an **invalidity allowance** (art. 42, para. 1, LAI). The amounts of the LAI invalidity allowances are identical to those of the corresponding AVS invalidity allowances.

290. Nationals of a country with which Switzerland has not concluded a social security agreement are entitled, in the same way as Swiss nationals, to rehabilitation measures and invalidity payments, provided that they have their civil domicile in Switzerland and habitually reside there and that, before the occurrence of the insurance contingency, they paid contributions for a period of at least 10 full years or have had their civil domicile in Switzerland for an uninterrupted period of at 15 years (art. 6, para. 2, LAI).

(iv) AVS/AI supplementary benefits

291. The first paragraph of article 11 of the transitional provisions in the Federal Constitution sets out that, to the extent that federal insurance benefits fail to cover essential needs, the Confederation shall grant to the cantons subsidies to finance supplementary benefits (PC). The requirements to be fulfilled by the cantons in order to obtain these subsidies are laid down in the Federal Act concerning AVS/AI supplementary benefits (LPC), which came into force on 1 January 1966. All of the cantons have legislated on supplementary benefits. Furthermore, irrespective of the benefits set out in the LPC, the cantons may allocate insurance or assistance benefits and fix the conditions under which they are granted (art. 1, para. 4, LPC).

292. Supplementary benefits are granted by the cantons to persons receiving AVS allowances or persons receiving AI disability pensions or invalidity allowances (except in the case of quarter pensions), by virtue of special provisions in conformity with the LPC requirements. Aliens domiciled in Switzerland are treated in the same way as Swiss nationals if they have lived in Switzerland for an uninterrupted period of 15 years immediately preceding the date on which they apply for supplementary benefit (art. 2, para. 2, LPC). The

supplementary benefits are granted if the reference annual income of the beneficiary of the pension does not exceed an amount fixed for that purpose by the cantons (art. 2, para. 1, LPC): 16,660 francs for a single person; 24,990 francs for couples; 8,330 francs for orphans (as at 1 January 1995).

293. These amounts may be reassessed at the same time as the AVS allowances are reassessed. The income limit is high for the reimbursement of certain costs, such as sickness costs or costs of time spent in a home, or when the person concerned has children giving entitlement to an AVS or AI child's pension. The annual amount of this supplementary benefit corresponds to the difference between the applicable income limit and the reference annual income of the person concerned.

Table 12. Developments in supplementary benefits (as at 31 December each year)

	Beneficiaries				Expenditure (thousands)		
	Old age pension	Survivors' pension	Disability pension	Total	AVS	AI	Total
1985	101,536	3,171	23,576	128,283	569,744	132,401	702,145
1990	118,286	2,398	30,695	151,379	1,124,361	309,276	1,433,637
1991	126,050	2,388	33,097	161,535	1,278,948	358,825	1,637,773
1992	124,900	2,176	34,230	161,306	1,468,464	425,959	1,894,423

Source: Federal Social Insurance Office.

(c) Financing of basic old-age, survivors' and disability insurance

294. The AVS is financed by the contributions paid by the insured person and the employer, by contributions from the public authorities, by interest from the AVS equalization fund and by revenue generated by third-party liability appeal proceedings (art. 102 LAVS).

295. Funding of the AVS is based on the principle of distribution, whereby the revenue from the year is used to cover current pensions with the addition of a capitalization element represented by the equalization fund, the amount of which should not fall below the amount of the annual expenditure.

296. Pursuant to article 3 LAVS, insured persons are required to pay contributions while they are engaged in gainful activity, but at the earliest from 1 January of the year following the year of their 17th birthday. The obligation to contribute lasts until the gainful activity ceases, but at the earliest from the age at which they may claim AVS benefits. In the case of insured persons not engaged in gainful activity and family members working in the family business who do not draw wages in cash, the obligation to pay contributions begins on 1 January of the year following the year of their 20th birthday and ceases at the age at which they may claim AVS benefits. The wife of an insured person, if she is not engaged in any gainful activity of if she works for her husband's business without receiving wages in cash, is exempt from the obligation to pay contributions, as is a widow not engaged in gainful activity. The contribution level for employees is 8.4 per cent as regards old-age and survivors' insurance (4.2 per cent for the employee and 4.2 per cent for the employer). The rate is 7.8 per cent for self-employed persons, but a descending scale is applied if the income level is under 45,200 francs per annum (as at 1 January 1995). Persons who are not engaged in gainful activity or earn only a very small amount therefore pay contributions calculated on the basis of their wealth and the amount of their income, expressed

in the form of an annuity, multiplied by 20. It is important to note that the range of contributions is based on total income (contributions payable on income with no upper limit).

297. Disability insurance is funded on the same basis as the AVS (art. 77 LAI). The categories of persons covered by the law are the same as for the LAVS. A 1.4 per cent contribution is levied on income from gainful activity.

298. The cantons which grant AVS/AI supplementary benefits receive from the Confederation subsidies that are funded by deductions from their general receipts. The amount of the subsidies depends on the canton's financial means. The cantons use their own sources of funding to cover the balance of their expenditure. They may also involve the communes in this.

(d) Main features of the tenth AVS revision of 7 October 1994

299. The tenth AVS revision is the fruit of considerable legislative endeavour lasting more than 10 years. The factors which prompted the Government to start work on the tenth revision as soon as the ninth came into effect (on 1 January 1979) were varied in character and included, *inter alia*, the introduction in 1981 in the Federal Constitution of the principle of equality of rights between men and women, problems in funding insurance due mainly to population growth, and demands for a flexible retirement age. The Government submitted the draft revision in 1990, and the Federal Council draft introduced equality of treatment for men and women and improvements in benefits, while adhering to the overall system already in force, based on the notion of the couple for determination of entitlement and calculation of benefits. Parliament approved the draft Act on 7 October 1994 after making substantial changes.

300. The main innovations of the tenth revision are:

(a) Abolition of the current system of pensions for couples; under the new system, each person, regardless of marital status, is entitled to his own pension. If both spouses are entitled to an old-age or disability pension, they can no longer claim a couple's pension, but rather two individual pensions. The two individual pensions may not, however, exceed 150 per cent of the maximum pension;

(b) The wife's supplementary pension in the AVS has been discontinued;

(c) Splitting of income: half the income earned during the portion of the marriage prior to the time at which the spouses reached the legal retirement age shall be allocated to the individual account of the other spouse. It must be specified, however, that splitting will not be applied to all types of pension; survivors' pensions and the pension granted to an individual whose spouse is not yet entitled to a pension shall not be based on this system; however, it shall apply to pensions granted to divorced persons;

(d) Improvement in the formula used for calculating pensions;

(e) Introduction of bonus credits for child-rearing and assistance tasks in the assessment of the reference income used to calculate pensions;

(f) Increase in the retirement age of women, from 62 years to 64 years, to be effected in two stages;

(g) Possibility of bringing forward payment of the old-age pension by two years, with a corresponding reduction in the amount;

(h) Introduction of a pension for widowers with children under the age of 18 years;

(i) Discontinuation of the AVS and AI extraordinary pensions subject to income limits and their replacement by supplementary benefits, which thus cease to be accessory benefits;

(j) Equality of treatment between Swiss citizens and foreigners domiciled in Switzerland in respect of the conditions for obtaining ordinary pensions.

2. Old-age, survivors' and disability occupational insurance ("second pillar")

301. With reference to occupational insurance (second pillar), article 34 *quater*, paragraph 3, of the Federal Constitution lays down that, in order to enable the elderly, survivors and disabled individuals to maintain their previous standard of living in an appropriate manner (taking into account the federal insurance benefits), the Confederation shall, through legislation, introduce the following measures in the sphere of occupational insurance:

(a) Imposition of a requirement on employers to insure their staff with a provident institution covering an enterprise, administration or association or with a similar institution and to bear at least half of the contributions; in addition, each employer must be given the possibility of insuring his staff;

(b) Setting of the minimum requirements for such provident institutions; in order to solve certain special problems, the Confederation may envisage measures applicable to the whole country;

(c) Measures ensuring that self-employed persons are able to take out optional insurance with an institution providing occupational insurance cover on terms equivalent to those offered to employees. The insurance may be made compulsory for certain categories of self-employed persons, either in a general manner or to cover particular risks.

302. The Federal Old-Age, Survivors' and Disability Occupational Insurance Act (LPP) came into force on 1 January 1985.

(a) Population coverage

303. Employees over 17 years of age who receive from a single employer an annual salary in excess of 23,280 francs (as at 1 January 1995) are required to have compulsory insurance (art. 2, para. 1, LPP). Employees who are not required to have compulsory insurance may take out optional insurance under the same conditions as compulsory insurance (art. 4, para. 1, LPP). Only individuals insured under AVS may be insured under LPP (art. 5, para. 1, LPP).

(b) Nature and level of benefits

304. The LPP offers the insured individuals a minimum level of cover (also known as "second pillar"). The registered provident institutions must provide the legal benefits as a minimum, but they are also free to offer broader cover and often do so. Thus, the provident institutions may, for example, allow for a higher insured salary level or a more generous benefit plan.

305. The LPP lays down that the portion of the annual salary between 23,280 francs and 69,840 francs (as at 1 January 1995) must be insured. This portion of the salary is known as the "reference salary" (art. 8, para. 1, LPP).

306. The LPP provides for old-age, survivors' and disability benefits. It also deals with the question of transferral from one provident institution to another from the point of view of maintaining cover. It further offers a scheme for the financing of home ownership to serve the insured person's personal needs.

307. With reference to **old-age** benefits under the LPP, men are entitled to such benefits on reaching the age of 65 years and women on reaching the age of 62 years (art. 13, para. 1, LPP). The provident institution's own regulations may stipulate that entitlement to old-age benefits commences on the day on which the gainful activity ceases but, as a rule, at the earliest five years before the qualifying age specified in the law (using an adapted pension conversion rate). Individuals qualifying for an LPP old-age pension are entitled to a supplementary pension for each child, who may claim an orphan's pension, on the death of the insured person.

308. The **survivors'** benefits set out in the LPP are payable only if the deceased person was insured at the time of his death or of the onset of the incapacity to work whose cause led to his death, or if he was in receipt of an old-age or disability pension from the provident institution at the time of his death (art. 18 LPP).

309. The LPP survivors' benefits can be subdivided as follows: widow's pension (art. 19, para. 1, LPP); widow's single allowance (art. 19, para. 2, LPP); orphan's pension (art. 20 LPP).

310. A widow is entitled to a widow's pension if, on the death of her husband, she has one or more dependent children or if she is over 45 years of age and the marriage lasted at least five years. The widow's pension amounts to 60 per cent of the full disability pension that the insured person could have drawn at the time of his death (art. 21, para. 1, LPP). A widow who does not fulfil the conditions for entitlement to a widow's pension is entitled to a single allowance equal in value to three annual pensions (art. 19, para. 2, LPP). The children of the deceased person are entitled to an orphan's pension. This benefit amounts to 20 per cent of the full disability pension that the insured person could have drawn at the time of his death (art. 21, para. 1, LPP).

311. If the deceased person was in receipt of an old-age or disability pension at the time of his death, the widow's pension and the orphan's pension amount to 60 per cent and 20 per cent, respectively, of the full old-age or disability pension (art. 21, para. 2, LPP).

312. With reference to the **disability** benefits provided under the LPP, it should be mentioned that persons with 50 per cent disability under the terms of the AI who were insured at the time of onset of the incapacity to work whose cause led to the disability are entitled to such benefits (art. 23 LPP). Insured persons are entitled to a full disability pension if they are at least two-thirds disabled under the terms of the AI, and a half-disability pension if they have at least 50 per cent disability (art. 24, para. 1, LPP). The disability pension is calculated using the same conversion rate as the old-age pension. The old-age credit is thus made up of the old-age credit acquired by the insured person at the commencement of entitlement to a disability pension and the sum of the old-age bonuses relating to future years, minus interest (art. 24, para. 2, LPP). Beneficiaries of a disability pension are entitled to a supplementary pension for each child who, on the beneficiary's death, would be entitled to an orphan's pension; the amount of each pension is equivalent to that of the orphan's pension (art. 25 LPP). The child's pension is calculated according to the same rules as the disability pension.

313. When an **insured person** transfers from one provident institution to another, he is entitled to a benefit, known as the "leaving" benefit, which corresponds, in a mainly benefit-based institution, to at least the person's own contributions including interest, plus 4 per cent for every year of age above the age of 20 (up to a maximum of 100 per cent), corresponding to the employer's contributions deemed to guarantee him the full amount of the insurance entitlement acquired. This leaving benefit must necessarily be transferred to the new provident institution, which shall use it to reconstitute the insurance coverage of the insured person in accordance with its rules. In a mainly contribution-based institution, this leaving benefit corresponds either to the accumulated

savings or, if death and disability are covered, to the actuarial reserve (policy reserve). In all cases, the minimum set out in the LPP must be complied with.

314. The LPP establishes special regulations for the incoming generation which will never have a normal contributory service at retiring age. The law obliges provident institutions to establish, as far as their financial means allow, special provisions for the incoming generation particularly favouring insured persons of mature years, especially those with low income levels (taking account of insurance measures pre-dating the Act) (arts. 31 to 33 LPP). None the less, at least 1 per cent of the reference salaries must be used to boost the benefits paid to the incoming generation.

315. The disability and survivors' pensions that have been applicable for more than three years must be adjusted in line with the price index. Each provident institution is required to establish provisions, as far as its financial means allow, to link old-age pensions to price trends (art. 33 LPP).

316. Mention should be made of the Federal Act of 17 December 1993 concerning promotion of home ownership by means of occupational insurance, which came into effect on 1 January 1995. With regard to the purpose of the Act, please see our comments on article 11 (right to adequate housing), in which this Act is briefly described.

(c) Funding of old-age, survivors' and disability occupational insurance

317. This form of insurance is funded, essentially, according to the system of capitalization: insured persons have an old-age credit which, throughout their career (fixed at 40 years for men and 37 years for women), increases through the accumulation of interest (4 per cent), plus old-age bonuses as set out in the law. Benefits are calculated on the basis of this old-age credit.

318. It should also be mentioned that each provident institution must at all times demonstrate that it can fulfil its commitments (art. 65, para.1, LPP). The institution may either bear the insurance risks itself or transfer them to an insurance institution. It establishes its own system of contributions and funding to ensure that the benefits envisaged may be provided as soon as they become payable. Under the compulsory regime, the employer's contribution must at least match the sum of the contributions by all employees (art. 66 LPP). In addition to the contributions to fund the minimum legal benefits, provident institutions must set aside 1 per cent of the reference salaries of the insured persons required to pay contributions towards old-age benefits for special measures to improve the benefits for the incoming generation and to link old-age benefits to trends in the price index (art. 70 LPP).

3. Individual insurance ("third pillar")

319. With reference to individual insurance (third pillar), article 34 *quater*, para. 6, of the Federal Constitution lays down that the Confederation, in conjunction with the cantons, shall encourage individual insurance, particularly through tax measures and through a policy to promote property ownership. Hence, the third pillar is made up of recognized forms of insurance that are categorized together with occupational insurance (provident agreements linked to insurance establishments and banking foundations) which qualify for special tax arrangements (third pillar a), through certain forms of personal insurance, such as life assurance and personal saving schemes (th. d pillar b) and through home ownership.

320. Employees and self-employed individuals may deduct from their taxable income the contributions paid to recognized provident institutions under pillar 3 a, thus, each year:

(a) Employees may deduct 8 per cent of the upper limit amount fixed in the LPP (69,840 francs), i.e. 5,587 francs;

(b) Self-employed persons may deduct up to 20 per cent of the income from gainful activity, but at most up to 40 per cent of the aforesaid limit, i.e. 27,936 francs (as at 1 January 1995).

G. Industrial accidents and occupational diseases

321. Article 34 *bis* of the Federal Constitution lays down that the Confederation shall introduce legislation providing for insurance against accident and disease, taking into account existing relief funds. It may make participation in such insurance arrangements compulsory in general or for certain specific categories of citizens. Compulsory accident insurance is currently governed by the Federal Accident Insurance Act (LAA) of 20 March 1981, which came into force on 1 January 1984.

1. Population coverage

322. The LAA lays down that employees in Switzerland shall have compulsory insurance; the same applies to home workers, apprentices, trainees, volunteers and persons working in technical schools or sheltered workshops (art. 1, para. 1, LAA). Self-employed persons engaging in gainful activity and domiciled in Switzerland, as well as members of their families who provide assistance in the enterprise and who are not insured on a compulsory basis, may obtain optional insurance (art. 4, para. 1, LAA).

2. Nature and level of benefits

323. The legal system guarantees coverage of risks connected with employment-related activities and thus provides for benefits for victims of industrial accidents, as well as victims of non-industrial accidents and occupational diseases.

324. Accidents befalling the insured person are deemed to be industrial accidents in the following cases:

- When the individual is carrying out work on the instructions of his employer or in the latter's interest;

- During an interruption in his work, or before or after work, if the person is present, with good reason, in the workplace or in the danger zone connected with his employment activity (art. 7, para. 1, LAA).

325. Diseases which, in the pursuit of occupational activity, are wholly or predominantly due to harmful substances or to certain types of work are deemed occupational diseases. The list of such substances and types of work, and of the afflictions they cause, is drawn up by the Federal Council (list system). Other diseases which can be proved to have been caused wholly or predominantly by the pursuit of an occupational activity are also deemed to be occupational diseases (general clause system) (art. 9 LAA).

326. As a general rule, occupational diseases are treated in the same way as industrial accidents. The insurance benefits are as follows:

Benefits for care and reimbursement of expenses (arts. 10 to 14 LAA)

327. The insured person is entitled to appropriate medical treatment for injuries resulting from the accident; auxiliary support to compensate for bodily injury or the loss of a function; compensation for damage caused by an accident to the objects that replace a part of the body, whether in form or in function; the cost of travel, transport and rescue, as necessary (outside the country up to one fifth of the maximum amount of the insured

annual income); the cost of transporting the body (outside the country up to one fifth of the maximum amount of the insured annual income) and funeral expenses (the funeral expenses may not exceed seven times the maximum amount of the insured daily income).

Cash benefits

328. The daily allowances and pensions are calculated on the basis of the insured income. When calculating the daily allowances, the last wage that the insured person received before the accident is used as a basis; when calculating pensions, the basis used is the salary earned by the insured person during the year preceding the accident. The maximum amount of the insured income is fixed by the Federal Council. It is currently 97,200 francs per annum and 267 francs per day (as at 1 January 1995).

329. The cash benefits are as follows:

(a) Daily allowance (arts. 16 and 17 LAA): a daily allowance is paid to an insured person who is totally or partially incapable of working as a result of an accident. Entitlement to the allowance commences on the third day following the accident. It ceases as soon as the insured person has recovered his full capacity for work, as soon as a pension becomes payable or when the insured person dies. The daily allowance corresponds to 80 per cent of the insured income in the event of total incapacity for work. If the incapacity is partial, the daily allowance is reduced accordingly;

(b) Disability pension (arts. 18 to 22 LAA): this is payable to an insured person who becomes disabled following an accident. A person whose earning capacity is likely to be adversely affected, either permanently or in the long term, shall be deemed to be disabled. For the purpose of evaluating disability, the income from employment that the insured person who has been disabled as a result of an accident could obtain by carrying on the activity that he could reasonably be expected to pursue, after any rehabilitation measures and assuming an undisturbed labour market, is compared to the income that he could have obtained had he not been disabled. Entitlement to an allowance arises as soon as there are no longer any grounds for expecting continued medical treatment to bring about an appreciable improvement in the condition of the insured person and as soon as any rehabilitation measures have been completed under disability insurance. Entitlement to the pension ceases if it is replaced fully by a cash settlement, when it is redeemed or when the insured person dies. The disability pension amounts to 80 per cent of the insured income in the case of total disability; if disability is partial, the pension is reduced accordingly. If the insured person is entitled to an AI or AVS pension, he receives a supplementary pension, which corresponds to the difference between 90 per cent of the insured income and the AI or AVS pension but may not exceed the amount set for total or partial disability. If it can be deduced from the nature of the accident and the condition of the insured party that he will recover his earning capacity if he receives a single benefit, the insured person receives a cash settlement instead of the pension. The maximum amount of this settlement is three times the insured annual income (art. 23 LAA);

(c) Compensation for personal injury (arts. 24 and 25 LAA): the insured person is entitled to such compensation if, as a result of an accident, he suffers serious and lasting physical or mental injury. The compensation is paid as a cash settlement that may not exceed the maximum amount of the insured annual income at the time of the accident and is graded according to the seriousness of the injury;

(d) Invalidity allowance (arts. 26 and 27 LAA): this allowance is payable to an insured person who, owing to his disability, has permanent need of the assistance of others or ongoing personal care in order to carry on normal daily activities. The payment is fixed depending on the degree of invalidity, and the monthly amount is at least double the maximum insured daily wage and at most six times this wage;

(e) Survivors' pensions (arts. 28 to 33 LAA): these are paid to the surviving spouse and orphans. The surviving spouse is entitled to a pension if, on the death of the other spouse, the surviving spouse has children who are entitled to a pension or shares the household with other children to whom the death gives entitlement to pension or if the surviving spouse is at least two-thirds disabled or becomes so within two years of the death of the other spouse. A widow is also entitled to a pension if, on the death of her husband, she has children no longer eligible for an allowance or if she has reached 45 years of age; she is entitled to a cash settlement if she does not qualify for a pension. Entitlement to the surviving spouse's pension commences in the month following the death of the insured person or if the surviving spouse becomes at least two-thirds disabled. It ceases on the remarriage or death of the entitled party or if the pension is redeemed. The children of the deceased insured person are entitled to an orphan's pension. If they have lost one of their parents they are entitled to an orphan's pension in respect of a deceased father or mother; if both parents are dead or if the surviving parent dies subsequently or if filiation existed only in respect of the deceased insured person, they are entitled to an orphan's pension in respect of both a deceased father and a deceased mother. Entitlement to the orphan's pension commences in the month following the death of the insured person or that of the surviving parent. It ceases on the child's 18th birthday or on the death of the orphan, or else on redemption of the pension. A child undergoing apprenticeship or pursuing a course of study shall be entitled to the pension until the end of the period of apprenticeship or study, entitlement ceasing at the latest on the child's 25th birthday. The widower's and widow's pensions amount to 40 per cent of the insured income; the orphan's pension to 15 per cent of the insured income if only one parent has died, and 25 per cent if both parents have died. If there are several survivors, the total amount of the pensions shall not exceed 70 per cent of the insured income. The amount of the cash settlement ranges from the amount of the annual income to five times that amount, according to the length of the marriage. If the survivors are entitled to an AI or AVS pension, the accident insurance grants them a supplementary pension corresponding to the difference between 90 per cent of the insured income and the AI or AVS pension, but no more than the above-mentioned amounts;

(f) Recipients of disability and survivors' pensions receive special payments, which form an integral part of the pension, to offset any cost-of-living increase (art. 34 LAA).

3. Funding

330. To fund the daily allowances, the cost of care and other short-term insurance benefits, the insurers apply the system of distribution of costs; adequate reserves are established to cover costs arising from accidents that have already occurred (art. 90, para. 1, LAA). To fund disability and survivor's pensions, the insurers apply the system of distribution of covering funds, while ensuring that adequate actuarial reserves exist to cover all pension entitlements arising from accidents that have already occurred (art. 90, para. 2, LAA). Payments to cover cost-of-living increases are funded by interest surpluses and, should these be inadequate, according to the system of distribution of costs (art. 90, para. 3, LAA). Reserves must be established to offset fluctuations in operating results (art. 90, para. 4, LAA). A ceiling of 97,200 francs per annum is applied to earnings subject to premium. The insurance premiums against employment-related diseases and accidents are borne by the employer, those against accidents that are not employment-related are theoretically borne by the worker (art. 91 LAA). The premiums are fixed in per mille terms in respect of the insured income. They are made up of net premiums that correspond to the risk and supplements designed to cover administrative costs, the costs of preventing employment-related diseases and accidents, and cost-of-living payments not funded by interest surpluses (art. 92, para. 1, LAA).

331. For the purpose of fixing insurance premiums to cover employment-related accidents, each enterprise is classified in one of the premium tariff classes and then in one of the degrees within each class. The classification takes account of the nature of the enterprise and its particular conditions, most specifically risk of accident and the status of preventive measures. Workers in an enterprise may be classified by group and in different classes and different degrees (art. 92, para. 2, LAA).

332. We refer readers to the information supplied in our report dated 14 July 1993 on the application of ILO Convention No. 18, Occupational Diseases, for the period between 1 July 1989 and 30 June 1993. The report deals with the status of Swiss legislation not only on occupational diseases but also on industrial accidents.

H. Unemployment benefits

333. In Switzerland, social security for the unemployed is guaranteed by three different systems:

(a) *Federal* unemployment insurance (principal instrument);

(b) *Cantonal* assistance (in 19 cantons);

(c) Social support provided by the *communes*.

334. Social welfare for unemployed persons who have exhausted their entitlement to federal unemployment insurance benefits is provided by cantonal legislation to support the unemployed (in 19 cantons). In other cantons, unemployed persons who have exhausted their entitlement are afforded social welfare through public insurance provided by the communes (non-contributory regime). Benefits paid as cantonal support for the unemployed or public assistance provided by the communes may be restricted, according to the means of the beneficiary and his family.

335. At the federal level, unemployment insurance is governed by the Unemployment Insurance Act of 25 June 1982 (LACI). This Act has just undergone an extensive revision, passed by Parliament on 23 June 1995. This report describes the system in place under the old LACI and confines itself to listing the main features of the revision (point 4). More detailed information will be provided during the oral presentation of the report.

1. Population coverage

336. Article 34 *novies*, para. 2, of the Federal Constitution lays down that unemployment insurance is compulsory for all employees.

Table 13. Employees protected by the LACI, 1993, in thousands

Total number of employees	3,088
Number of employees covered by the LACI[90]	2,942

[90] In Switzerland, unemployment insurance is compulsory for all employees, including civil servants and apprentices. Workers who have reached the age of entitlement to an AVS pension are, however, excluded from the range of insured persons.

2. Nature and level of benefits

(a) Nature of benefits

337. Unemployment insurance guarantees insured persons "appropriate compensation for loss of earnings" (art. 1, LACI). This **replacement income** is provided by the following benefits: unemployment benefit; short-time benefit; bad-weather benefit; benefit in the event of the employer's insolvency.

338. Unemployment insurance is also designed to prevent or reduce unemployment. As **preventive measures**, the benefits provide financial assistance for the following: retraining, further training and re-entry into employment (courses, induction allowances for entering new occupation); promotion of mobility among the unemployed (insured persons who accept employment outside the area where they live); other related measures.

(i) Unemployment benefit

339. Entitlement to unemployment benefit is subject to conditions that are set out in article 8 of the LACI. The insured person must be unemployed or partially unemployed. According to the first paragraph of article 10 of the LACI, a person who is not a party to an employment relationship and is seeking full-time employment is deemed to be fully unemployed (art. 10, para. 1, LACI). A person is deemed to be partially unemployed where he is not a party to an employment relationship and is seeking only part-time employment or where he is engaged in part-time employment and is seeking to replace this by full-time employment or to supplement it with other part-time employment (art. 10, para. 2, (*a*)(*b*), LACI).

340. The contingency of unemployment means loss of work that entails a loss of earnings and lasts for two or more consecutive working days (art. 11, para. 1, LACI). The loss of work by insured persons who are partially unemployed is taken into consideration when it relates to at least two working days in the space of two weeks (art. 5 OACI).

341. Any insured person claiming unemployment benefit must be regularly resident in Switzerland (art. 12 LACI), have completed compulsory school, be under the age of entitlement to an AVS pension, fulfil the contributory service requirement or be exempt therefrom (arts. 13 and 14 LACI) and satisfy the reporting regulations (art. 17 LACI).

342. Entitlement to unemployment insurance benefit is subject to the unemployed person's availability for placement. An unemployed person shall be deemed to be available for placement if he is willing to accept suitable work and is able and entitled to do so (art. 15, para. 1, and art. 16 LACI).

(ii) Short-time benefit

343. The provisions of articles 31 to 41 LACI governing short-time benefit cover the contingency of partial unemployment without termination of the employment relationship.

344. Under the terms of article 31, para. 1 (*a*) LACI, workers who are placed on short time shall be entitled to short-time benefit where they are required to pay AVS contributions or where they have completed their compulsory schooling but are under the age for contribution (18 years). In order to be covered by the insurance, the work losses must be due to economic factors and be unavoidable (art. 32, para. 1 (*a*), LACI). Loss of work as a result of measures taken by the authorities or a reduction in custom as a result of weather conditions or other circumstances that may not be attributed to the employer may also be taken into consideration (art. 32, para. 3, LACI; arts. 51 and 51(a) OACI).

345. Article 33 LACI relates to loss of work not covered by short-time working. In particular, it covers loss of work that is probably not temporary; loss of work that makes it impossible to keep jobs open; loss of work due to organizational arrangements within the undertaking, or other usual and recurrent interruptions of operations, or circumstances forming part of the employer's normal business risks; loss of work that is usual in the sector, profession or undertaking, or is caused by seasonal fluctuations in employment.

(iii) Bad-weather benefit

346. Workers employed in certain branches of industry are entitled to bad-weather benefit (art. 42 *et seq.* LACI). The loss of work must be attributable solely to weather conditions, the continuation of the work must be technically impossible or give rise to disproportionate costs, or the conditions must be such that workers could not be expected to carry on their work (art. 43 LACI).

(iv) Insolvency benefit

347. Contrary to the above-mentioned benefits, the insolvency benefit does not cover the risk relating to loss of work, but the risk of insolvency on the part of the employer (art. 51 *et seq.* LACI). It is payable when an insolvent employer can no longer pay the worker the wages due to him under the employment contract.

(v) Retraining, further training and re-entering employment

Courses (art. 59 et seq. LACI)

348. Insured persons for whom placement is impossible or extremely difficult because of factors related to the labour market may attend courses—paid for by the unemployment insurance—for the purpose of retraining, further training or re-entering employment, if they are unemployed or about to become unemployed (having received their dismissal notice). Such courses must increase the unemployed person's suitability for placement (art. 59, paras. 1 and 2, LACI). A person who fulfils these conditions is entitled to reimbursement of expenses necessarily incurred on course fees and study materials and for travel between his home and the place where the course is held. He may also qualify for a reasonable grant towards the cost of board and lodging at the place where the course is held (art. 61, para. 3, LACI).

349. Persons who do not fulfil the unemployment insurance contribution requirement and for whom no suitable employment can be found may also qualify for reimbursement of these expenses, for a maximum of 250 days, when they attend such courses with the consent of the authorities responsible for placement for the purpose of taking up gainful employment (art. 60, para. 4, LACI).

350. An insured person who is unemployed, but satisfies the minimum contributory service requirement (i.e. has contributed for six months in the two years preceding the request for benefits) or who is exempt therefrom (art. 14 LACI) may, additionally, be entitled to a maximum of 400 daily allowances, the number normally corresponding to the entitlement of an insured person who has a contributory service of at least 18 months (art. 27 (*c*) LACI). The daily allowances are not subject to reduction during the course (art. 61, para. 2, LACI). Where the course makes this necessary, an insured person is not required to be available for placement during the said course (art. 60, para. 3, LACI). As far as the courses are concerned, experience has indicated certain principles. The course must not exceed one year. Training may be provided by means of daytime or evening courses, either full-time or lasting a few hours each week. In principle, the course must take place in Switzerland. There is no limit regarding course fees but a cheaper equivalent course must be given precedence. Basic training is excluded, as is further training of an entirely general nature.

Employment induction allowances (arts. 65-67, LACI)

351. These measures are designed to encourage employers to take on unemployed persons who are difficult to place because of their more mature years, physical or mental disability or poor employment record (art. 90, para. 1, OACI). In the case of such insured persons, who have to be taken on for an induction period and who, for that reason, receive a reduced wage, the unemployment insurance covers the difference between the actual and normal remuneration. These allowances are paid to an insured person who fulfils the unemployment insurance contribution requirement or is exempt therefrom, if the wage offered is at least commensurate with the work done and the insured person can expect to be engaged at the end of the induction period (art. 65 LACI).

(vi) Employment outside the area of residence

352. Unemployment insurance encourages unemployed persons (or persons about to become unemployed), whom it has not been possible to place in employment in the area where they are resident to accept employment outside that area. It pays the insured person an allowance for the cost of commuting if he returns to his home each evening, or an allowance towards board and lodging if he only goes home at the weekend (arts. 68 to 70 LACI). No allowance is payable unless the insured person fulfils the contribution requirement or is exempt therefrom, and suffers a financial loss as compared with his previous employment (art. 71, para. 2, LACI).

(vii) Other measures

353. Subsidies are paid to public or private organizations to enable them to establish programmes for employing unemployed persons, to perform labour-market studies and to introduce technical measures to make placement more efficient.

(b) Amount and duration of benefits

354. Entitlement to unemployment benefit commences after a general waiting period of five days of reported unemployment. However, this waiting period does not apply to persons whose insured income does not exceed 3,000 francs per month. This limit is raised by 500 francs per child giving entitlement to a child allowance or vocational training allowance (art. 18, paras. 1 *bis* and 1 *ter*, LACI, introduced by the Federal Decree of 16 December 1994). The special waiting periods (art. 6 OACI) must be observed in addition to the general waiting period.

355. The unemployment benefit is paid in the form of daily allowances (art. 21 LACI). The full daily allowance amounts to 80 per cent of the insured income up to a ceiling subject to contributions of 8,100 francs per month. None the less, the loss of earnings must be significant, and monthly earning levels below 500 francs or 300 francs for uninsured persons working at home are not covered by the insurance (art. 40 OACI). Insured persons who do not receive child allowances and are not bringing up a child alone are entitled only to 70 per cent of the insured income provided they qualify for a daily allowance greater than 130 francs and are not disabled (art. 22, para. 1 *bis*, LACI, introduced by the Federal Decree of 19 March 1993).

356. The maximum number of daily allowances that an insured person may receive during the basic allowance period (two years) is generally determined by the number of months he contributed during the basic contribution period (two years). The number of daily allowances is currently set at a maximum of 170 daily allowances for an insured person who has contributed for at least six months; a maximum of 250 or 400 daily allowances for an insured person who has contributed for 12 months or 18 months (art. 27, LACI; art. 2, Order of 24 March 1993 concerning the Federal Decree of 19 March 1993).

357. The short-time benefit and the bad-weather benefit are paid as a percentage (80 per cent) of the loss of earnings covered by insurance (art. 34 LACI). The maximum duration of benefit is 12 accounting periods (in general, calendar months), which may be increased to 24 accounting periods (art. 35, paras. 1 and 2, LACI, as amended by the Federal Decree of 19 March 1993).

358. The insolvency benefit covers wage claims (100 per cent of the unpaid wage up to the maximum amount subject to contributions) in respect of the last three months of the employment relationship (art. 52 LACI).

359. The daily allowances paid as preventive measures are added to the unemployment benefits and may not exceed 400 in number. Employment induction allowances, which may not exceed 60 per cent of the normal remuneration, are payable during the basic two-year period, for a maximum of six months or, exceptionally, for a maximum of 12 months (in the case of unemployed persons in the older age group; art. 66, paras. 1 and 2, LACI). Allowances to encourage employment mobility are paid for a maximum of six months.

3. Finance

360. The unemployment insurance programme is basically financed by the contributions of insured persons and employers and by the interest accruing from the equalization fund (art. 90, para. 1, LACI).

361. The contributions are calculated on the basis of the reference wage, as determined under the AVS. The ceiling on income or wage level subject to contributions, which is also the amount of the insured income and thus the maximum amount for the calculation of benefits, is 8,100 francs. This figure is the maximum income insurable under compulsory accident insurance (97,200 francs), converted into monthly amounts (art. 3 LACI).

362. Where the worker and employer each pay half, the contributions currently amount to 3 per cent of the reference wage. This figure was increased by the Federal Decree of 16 December 1994, in response to the increased funding requirements of unemployment insurance (art. 4 LACI).

363. Contributions are levied under the AVS system. In return, the unemployment insurance pays the AVS a certain amount to offset administrative costs.

364. There is also an extraordinary source of financing for unemployment insurance. The Confederation and cantons provide loans, in equal shares, at an equitable interest rate, if the contributions set at the maximum rate and the reserves are not sufficient to finance the insurance fully (art. 90, paras. 2 and 3, LACI).

4. Main features of the second revision of the Unemployment Insurance Act

365. The second LACI revision was adopted by Parliament on 23 June 1995. It is due to come into effect in two stages; the first stage was completed on 1 January 1996 and the second will proceed on 1 January 1997.

366. By virtue of article 1, the revised LACI is no longer solely designed to compensate loss of income but also to "prevent imminent unemployment and to counteract it by measures pertaining to the labour market". The LACI in its revised form therefore stresses measures to allow the unemployed to re-enter the labour market in an active and effective manner. Compared with the law in force, the new version brings in changes which essentially affect the conditions and duration of entitlement to benefits, as well as to benefits established regarding measures relating to the labour market.

367. The length of the benefit period is no longer limited to 400 days. The new act makes it possible to pay benefits throughout the basic two-year period. A distinction is made between the so-called "normal" benefits and the "specific" benefits. Insured persons under 50 years of age who have contributed for six months in the

course of the previous two years are entitled to 150 normal daily allowances (250 up to 60 years of age and 400 thereafter). The payment of specific daily allowances is dependent on participation in measures pertaining to the labour market (art. 27, paras. 1 and 2, revised LACI).

368. In addition to the existing measures relating to the labour market (courses, vocational programmes, employment induction allowances), the revised LACI envisages training allowances and measures to promote self-employment and pre-retirement activities.

369. The revised LACI also envisages the possibility of authorizing pilot trials outside the confines of the Act for testing new measures relating to the labour market or encouraging flexible working hours, the aim being to maintain or create jobs.

370. The cantons are required to propose a minimum range of labour-market related measures. In order to permit effective implementation of such measures, the cantons are required to improve placement by establishing regional placement offices. Each regional placement office should have a tripartite commission, made up of equal numbers of representatives of employers, workers and the labour-market authority.

371. Efforts to replace the passive receipt of daily allowances by active re-entry measures affect the definition of suitable work and, thus, the length of compensatory benefit in the event of intermediate earning.

372. The extension of the benefit period is counterbalanced by the reduction in the amount of the daily allowance. The daily allowance is thus reduced to 70 per cent of the insured income, provided that this amount is greater than 130 Swiss francs. The Act also introduces a five-day waiting period. In order to prevent hardship cases, persons whose insured income does not exceed 3,000 Swiss francs are exempt from this waiting period.

Table 14. Proceeds of unemployment insurance and amount of benefits granted (1993)

Proceeds:	
Employers' and insured persons' contributions	3,637,511,589
Reimbursement of contributions by cross-border commuters	1,002,114
Restitution of benefit in cases of insolvency	15,060,195
Interest	26,342,377
Sundry receipts	3,552,068
Expenditure:	
Unemployment benefit	4,193,279,336
Short-time benefit	442,515,520
Bad-weather benefit	87,597,402
Insolvency benefit	60,790,386
Individual preventive measures	155,348,957
Collective preventive measures	166,634,417

I. Family allowances

373. Article 34 *quinquies* of the Federal Constitution stipulates that the Confederation, in the exercise of the powers conferred upon it and within the limits of the Constitution, shall take account of the needs of the family. It is also authorized to legislate in connection with family indemnity funds. It may lay down compulsory membership in general or for certain groups of the population. It takes account of existing funds, supports the efforts made by the cantons or the professional associations to establish new funds and may create a central indemnity fund. It may make its financial benefits dependent upon equitable participation by the cantons.

374. The federal State has to date legislated on behalf of agricultural workers, small-scale farm holders, owners of mountain pastures and fishermen by establishing a regime applicable to those categories of persons. The regime was established by the Federal Act concerning Family Allowances in Agriculture (LFA), of 20 June 1952, which came into force on 1 January 1953. The Confederation has also established family allowances for federal employees. The cantons retain competence in respect of the other sectors of the population.

1. Population coverage

375. The federal family allowance regime in agriculture applies to all wage-earning workers in agriculture, farmers for whom farming is their main or ancillary activity with an annual income not exceeding 30,000 francs (this income limit is increased by 5,000 francs for each dependent child) (as at 1 January 1995), owners of mountain pastures[91] and fishermen.

376. In principle, the 26 cantonal family allowance regimes cover all non-agricultural wage-earning workers. Some regimes also provide allowances for children of non-agricultural self-employed workers, where their income does not exceed certain limits; in other cantons family allowances for the children of persons not engaged in gainful activity are also payable under certain conditions (e.g. within certain income limits). Several cantons pay agricultural workers and self-employed farmers family allowances to supplement those provided by the federal regime.

2. Nature and level of benefits

377. The **federal regime for family allowances in agriculture** pays family allowances (child allowances) from the first child. In principle, all children in the care of the recipient of the allowance give entitlement to allowances: children of married parents; children of unmarried parents; adopted children; children of the spouse; foster children; brothers and sisters of the recipient of the allowance, if the latter is largely responsible for providing for them.

378. The federal regime for family allowances in agriculture also provides for granting household allowances for the following workers:

(a) Workers who live in the same household with their spouse or with their children;

(b) Workers who live in domestic community with their employer and whose spouse or children have their own household, towards the costs of which the worker has to contribute;

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[91] The LFA refers to farmers carrying on an agricultural activity as their main or ancillary activity whose income does not exceed the above-mentioned limits, as well as owners of mountain pastures, by the term "small-scale farm holders".

(c) Workers who, with their spouse or their children, live in domestic community with their employer.

Only agricultural wage earners may claim household allowances.

379. The child allowances for agricultural workers and small-scale farm holders are graded according to the region in which the farm is located and the number of children; in the flat-land regions, they amount to 1,740 francs per annum for the first two children and 1,800 francs per annum from the third child and, in the mountain regions, 1,980 francs per annum for the first two children and 2,040 francs per annum from the third child. The household allowances amount to 1,200 francs per annum (as at 1 January 1995).

380. The child allowances for agricultural workers and small-scale farm holders are paid until the child's 16th birthday or until the end of compulsory school attendance (art. 9, para. 1, LFA). The limit is extended to 20 years of age if the child is incapable of earning his living because of an illness or disability and to 25 years if the child is continuing his school education or is a student or apprentice. Entitlement to the child allowance commences on the first day of the month during which the child is born; it ceases at the end of the month during which the conditions for receiving the allowances cease to be fulfilled. Entitlement to the household allowance commences on the first day of the month during which the joint household is established. It ceases at the end of the month during which the household is dissolved.

381. In the **cantonal family allowance regimes**,[92] family allowances are paid from the first child. As a rule, children giving entitlement to allowances are the children of married and unmarried parents, as well as the children of the spouse, adopted children and foster children. In certain cantons, entitlement to allowances for the children of the spouse is dependent on the provision by the wage earner of a major part of their upkeep. Foster children do not give entitlement to allowances in certain cantons unless the recipient of the allowance provides for their upkeep free of charge and on a lasting basis. In some legislations siblings for whose upkeep the wage-earner provides are treated in the same way as his own children.

382. Initially, cantonal laws envisaged allowances for children only on the basis of the legal minimum benefits; currently the child allowances range, depending on the canton, from 1,560 francs to 3,360 francs per annum per child. Subsequently, several cantons have established vocational training allowances ranging, depending on the canton, from 1,800 francs to 4,320 francs per annum. Some cantons have also established birth allowances which vary, depending on the canton, from 600 francs to 800 francs for each birth. Five cantons have introduced a fostering allowance (allowance paid to families who take in an under-age child with a view to adoption) equal to the birth allowance, and one canton has introduced a large-family allowance, from the third child, while another canton has household allowances for non-agricultural wage-earners. Three cantons have family allowances for persons who are not engaged in gainful activity, subject to their income not exceeding a certain limit (as at 1 January 1995).

383. The maximum age for entitlement to child allowances is, in principle, 16 years. In the event of vocational training or an illness or infirmity that precludes wage earning, the age limit is increased to 18, 20 or 25 years.

384. Foreign wage-earners living in Switzerland with their families are entitled to family allowances in all cantons, under the same conditions as Swiss workers. Some cantons treat them in the same way as Swiss wage-earners even if the children live outside Switzerland. Other cantons have laid down special requirements. Asylum-seekers with children abroad are not entitled to receive allowances unless the person concerned is recognized as a refugee or temporarily admitted into the country on humanitarian grounds.

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[92] Cf. type and amount of family allowances, according to cantonal law, appended.

3. Finance

385. In the federal regime for family allowances in agriculture, a 2 per cent contribution is levied on the wage paid to farm workers (as at 1 January 1995); this contribution is borne by the employer. The costs of paying family allowances to small-scale farm holders are borne by the Confederation (two thirds) and the cantons (one third).

386. In the cantonal family-allowance regimes, allowances in respect of the children of non-agricultural wage-earners are financed by the employer's contributions. The recognized private funds levy contributions ranging from 0.1 per cent to 5.5 per cent of the wage. The cantonal funds levy contributions ranging from 1.2 per cent to 3 per cent (as at 1 January 1995). In the cantons which pay family allowances to self-employed workers not employed in agriculture, these allowances are financed either by contributions from the recipients of the allowance or by contributions from self-employed workers which are fixed at a percentage of the income from their gainful activity or taxable income.

Table 15. Family allowances paid to wage-earners according to cantonal law (as at 1 January 1995)

Canton	Child allowance Per month per child	Vocational training allowance [11] Per month per child	Age limit		Birth allowance	Employers' contributions to the cantonal fund (as percentage of wages)
			Ordinary	Special[1]		
Zurich	150	-	16	20/25	-	1.5
Bern	150/180[3]	-	16	20/25	-	1.5
Lucerne	165/195[3]	225	16	18/25	800[21]	1.9[10]
Uri	170	-	16	18/25	800	2.0
Schwyz	160	-	16	18/25[17]	800	1.5
Obwalden	170	-	16	25/25	-	1.8
Nidwalden	175/200[3]	-	16	18/25	-	1.7
Glarus	145	-	16	18/25	-	1.95
Zug	200/250[2]	-	16	20/25	-	1.6[10]
Fribourg	190/210[2]	250/270[2]	15	20/25	1,000[7]	2.5
Solothurn	165	-	18	18/25[12]	600	1.5
Basel-Town	140	170	16	25/25	-	1.2
Basel-Country	140	170[18]	16	25/25	-	1.5
Schaffhausen	160	200	16	18/25[20]	660[8]	1.7[10]
Appenzell (Outer-Rhoden)	145	-	16	18/25	-	1.8
Appenzell (Inner-Rhoden)	140/150[2]	-	16	18/25	-	2.0
St. Gallen	150/190[2]	-	16	18/25	-	1.8[10]
Graubünden	140	165	16	20/25[6]	-	1.75

Canton	Child allowance Per month per child	Vocational training allowance [11] Per month per child	Age limit		Birth allowance	Employers' contributions to the cantonal fund (as percentage of wages)
			Ordinary	Special[1]		
argau	150	-	16	20/25	-	1.7
hurgau	135	150	16	18/25	-	1.7
icino	181	-	16	20/20	-	2.0
aud[14]	130[5]	175[5]	16	20/25[6]	1,300[7,19]	1.9
alais	200/280[2]	280/360[2]	16	20/25	1,300[7,19]	-[9]
euchâtel[13]	130/155 180/230	190/215 240/290	16	20/25[6]	800	1.8
eneva	135/150[3]	220	15	20/25	1,000[7]	1.5
ra	138/162[4] 120[15]	186	16	25/25	708[7]	3.0

ource: Federal Social Insurance Office.

tes:

The first limit applies to children who are unable to engage in gainful activity and the second to students and apprentices.

The first rate applies to the allowance for each of the first two children and the second rate to the allowances payable from the third child.

Bern/Lucerne: The first rate applies to the allowance for children under 12 years of age; the second to that for children over 12 years of age. Geneva: the first rate applies to the allowance for children under 10 years of age; the second to that for children over 10 years of age. Nidwalden: the first rate applies to the allowance for children under 16 years of age; the second rate to that for children over 16 years of age.

The first amount relates to families with one or two children and the second to families with three or more children.

An additional amount of 145 francs is payable, for the third and each subsequent child, if the children reside in Switzerland. The child allowance amounts to 175 francs per month for children between 16 and 20 years of age who are unable to earn a living.

No benefits are payable for children in receipt of an AI allowance. In the canton of Vaud, the allowance is halved if an AI half-pension is paid.

A fostering allowance, equal to the birth allowance, is paid in respect of a child placed in a family with a view to adoption.

Provided that the income on which the AVS contribution is payable does not exceed a limit of 47,300 francs.

There is no cantonal indemnity fund for family allowances.

Including the contribution to the family allowance scheme for self-employed persons.

The vocational training allowance replaces the child allowance; in the cantons where there is no vocational training allowance, the child allowance is paid until the completion of studies or apprenticeship, but no later than the age limit.

12. The age limit is 25 years for children who have been disabled since birth or who have become disabled in childhood.

13. The amounts correspond to the allowance paid for the first, second, third and from the fourth child, respectively.

14. Legal minimum: each fund may pay more if it has sufficient financing; requirement to pay 180 francs (vocational allowance), 1,500 francs (birth allowance)—amounts paid by the cantonal fund —on the part of certain categories of employers and of funds notified directly; see also note 5.

15. Persons in receipt of a child allowance or a vocational training allowance are entitled to a household allowance of 120 francs per month.

16. The birth allowance is doubled in the case of multiple birth. The same applies to the fostering allowance if more than one child is adopted at the same time.

17. Workers are entitled to family allowances for their legitimate children living abroad only until such children reach their 16th birthday.

18. In the case of children undergoing vocational training and living abroad, the allowance amounts to 140 francs.

19. The allowance is increased by 50 per cent in the case of multiple birth or fostering.

20. In some specific cases, the vocational training allowance may be granted beyond the age limit.

21. The birth allowance is paid only for children born in Switzerland and entered in the Swiss Register of Births.

X. ARTICLE 10: PROTECTION OF THE FAMILY, MOTHER AND CHILD

A. Principal instruments applicable

387. The principal instruments applicable are:

(a) International instruments:

International Covenant on Civil and Political Rights, articles 17, 23 and 24;

European Convention on Human Rights, articles 8 and 12;

(b) National instruments:

Federal Constitution, articles 34 *quinquies* and 54;

Swiss Civil Code, dated 10 December 1907; book 2, Rights of the Family;

Code of Obligations, dated 30 March 1911;

Loi fédérale sur l'assurance-maladie (Federal Act concerning sickness insurance) (LAMA), dated 13 June 1911;

Loi fédérale sur le travail dans l'industrie, l'artisanat et le commerce (Federal Act concerning work in industry, handicrafts and commerce), Loi sur le travail (Labour Act) (LTr), dated 13 March 1964;

Ordonnance 1 concernant la loi sur le travail (Order concerning the Labour Act) (OLT1), dated 14 January 1966;

Loi fédérale sur les allocations familiales dans l'agriculture (Federal Act concerning family allowances in agriculture) (LFA), dated 20 June 1952;

Loi fédérale sur les centres du consultation en matière de grossesse (Federal Act concerning pregnancy advisory centres), dated 9 October 1981.

B. General

388. In Switzerland, recognition of the family as the fundamental unit of society and its protection by the State are anchored in articles 54 and 34 *quinquies* of the Federal Constitution. The former protects the right to marriage, while the latter enjoins the federal State to take account of the needs of the family. To these provisions should be added articles 8 and 12 of the European Convention on Human Rights, and also articles 17, 23 and 24 of the International Covenant on Civil and Political Rights. Switzerland has also signed the 1989 Convention on the Rights of the Child, which it is currently in the process of ratifying.

389. Swiss family law has been revised in stages over time with a view to adapting the provisions of the 1907 Civil Code to present-day conditions. The first stage in this revision related to adoption (Federal Act of 30 June 1972). This was followed by the law of filiation, which now guarantees the same rights and effects in respect of illegitimate as legitimate filiation. The interests of the child have also received increased legislative attention. The next stage was to revise the marriage law, which came into force in 1988, one of the main aims of which was to achieve equality between spouses. The final and present stage is the revision of the divorce law.

The main focus of this revision relates to maintenance of judicial divorce, the "depenalization" of the divorce law, encouragement to the spouses to settle their divorce amicably, the best protection of the interests of the children and fair settlement of the economic consequences of the divorce.

390. As far as a definition of the family is concerned, the Swiss legal system does not offer any standard definition. The scope of the term is rather broad and covers different types of family relationship according to the particular realm of law considered and, most particularly, according to the function of the provisions in question. For example, the Civil Code, which has a title devoted to "family law", does not give a definition of the term but applies a number of different criteria such as blood relationships, legal relationships or the fact of living under the same roof. None the less, if it is necessary to select one definition of the family, it will be that proposed by a group of experts in 1982: "social group, based on the relationship between parents and children and acknowledged as such by society, that is to say institutionalized".[93]

391. The structure of the family has, however, evolved considerably in recent years. New types of family relationship have emerged and become more widespread, such as single-parent families and regrouped families. However, as shown by a recent study by the Federal Statistical Office,[94] family households present a surprisingly traditional picture: the classic model of the nuclear family continues to be a deeply ingrained part of life. Over half (52.5 per cent) of the members of private households live in a household made up of a married couple with children. Although the number of single-parent families has increased substantially, such families still account for only 5.1 per cent of households. Similarly, although the number of unmarried couples tripled between 1980 and 1990, in proportional terms this number is still small (4.2 per cent for unmarried couples without children and 0.9 per cent for unmarried couples with children).[95]

392. Between 1988 and 1992, some 54,000 marriages were contracted between foreigners and Swiss citizens, accounting for almost one quarter of all marriages during that period. Consequently, in 1993 the Federal Commission for Aliens' Problems (CFE) published an information leaflet in nine languages entitled "Mixed-nationality marriages" to be placed in registry offices for distribution free of charge to prospective mixed couples.

C. Right to marriage on a freely consenting basis

393. In Switzerland, freedom of marriage is guaranteed by article 54 of the Federal Constitution, which states, in paragraph 1, that the right to marriage is placed under the protection of the federal State and, in paragraph 2, that no impediment to marriage may be raised on the grounds of religious denomination, the lack of financial means of either of the partners, their conduct or any other grounds.

394. The minimum marrying age is currently set at 20 years for men and 18 years for women. Since the age of majority under civil law is currently 20 years, a woman marrying before this age thus attains that majority. Following the revision of the Civil Code of 7 October 1994, the age of civil and matrimonial majority will be

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[93] Cf. "*La politique familiale en Suisse*" (Family policy in Switzerland), final report submitted to the Head of the Federal Department of the Interior by the "Report on the Family" Working Group, 1982, p. 7.

[94] "*Familles d'aujourd'hui. L'image de la famille dans le recensement fédérale de la population de 1990*". (Families today. The image of the family in the 1990 federal population census), Bern, 1994.

[95] Information taken from "*Familles d'aujourd'hui. L'image de la famille dans le recensement fédérale de la population de 1990*" (Families today. The image of the family in the 1990 federal population census), Federal Statistical Office, Bern, 1994 (annexed).

lowered to 18 years. Neither men nor women will be permitted to marry before attaining the age of majority. This revision entered into effect on 1 January 1996.

395. For more details on marriage, its effects and its dissolution, please refer to the initial report of Switzerland on the International Covenant on Civil and Political Rights, and, more specifically, to the comments relating to article 23, paragraphs 2, 3 and 4.

D. Protection of the family

396. Article 34 *quinquies* of the Federal Constitution enjoins the Confederation to take account of the needs of the family and gives it competence with regard to family allowances and maternity benefits. Some cantonal constitutions and a large number of laws also contain provisions to protect the family. In addition, because of their autonomy, the communes are responsible for various tasks relating to family policy. In this field, the tasks are divided among the Confederation, the cantons and the communes. It is therefore difficult to give an accurate and exhaustive picture of the provisions in effect at all levels of State structures.

397. Switzerland's family policy is not a population policy based on considerations of a demographic nature. It is based rather on considerations of social justice: it recognizes the family's contribution to society and is designed to provide the family with assistance to correct the distribution of income. This is done by offsetting family expenses primarily by means of family allowances and tax relief. Mention should also be made of various social security benefits, such as the income supplement paid to pensioners or disabled persons with dependent children and orphan's allowances. Other measures designed to support the family are taken in connection with housing policy and the provision of advisory centres.

1. Family allowances

398. Family allowances are cash benefits which make a regular and continuing contribution to the maintenance of dependent children or provide special assistance for particular times in family life. They play a primary role in the policy of providing economic assistance to families. Switzerland has a **federal** regime for agriculture and **cantonal** regimes for non-agricultural salaried employees, non-agricultural self-employed persons and persons who are not gainfully active.

399. For a detailed description of these regimes, please refer to the commentary on article 9.

2. Tax relief for families

400. In Swiss fiscal law, in the area of direct tax, the principle which generally prevails is that of the taxation of family income. The distinctive feature of this family taxation is the fact that the liability to tax of the head of the family is extended in its effect to the family income as a whole. Since there is a progressive scale for income tax, the system of family taxation may result in an increased tax burden, especially if both spouses are gainfully occupied. Corrective measures such as tax relief and double taxation schedules provide a means of reducing this burden.

401. The canton of Vaud has done pioneering work by introducing, as of 1 January 1987, the so-called "family quotient" system, which consists in taxing the entire income of the couple and dependent children at the rate applicable to this total income divided by a factor determined according to the composition of the family. The more family members, the lower the rate.

402. As regards direct federal taxation, since 1995 the favourable rates for married couples have been extended to all persons with children living in the same household. In addition, in response to two parliamentary

interventions, the Federal Council has proposed that a working group be set up to review the family taxation system.

3. Housing policy[96]

403. Housing costs can cause considerable financial problems for the most socially deprived families. Between 1970 and 1990 there was a modest increase from 28 to 31 per cent in the proportion of Swiss households in which the home is owned. Young families are the least represented among home-owners. Generally speaking, the rental burden may be considered to be too heavy, and some households, especially those with children, can find themselves in a very precarious situation as a result. The fundamental aim of Swiss housing policy is to improve the housing supply for the lowest-income population groups. The general conditions established for housing policy limit the scope for State intervention, the construction of housing being an activity concentrated mainly within the private economy. The Confederation, the cantons and the communes are endeavouring, however, through numerous measures, to improve the situation of the persons concerned.

404. For instance, the Federal Act of 4 October 1974 encouraging the construction and ownership of housing provides, *inter alia*, for assistance to be provided for the construction of housing to be offered at favourable rents while also establishing favourable terms for housing designated for low-income population groups. It is also designed to encourage ownership of family homes.

405. The Federal Act of 20 March 1970 concerning the improvement of housing in the mountainous regions establishes, for the purpose of home renovation, a non-returnable subsidy of 10 to 30 per cent of the total cost of the works taken into account for the calculation of the subsidy, the proportion being adjusted according to the individual canton's financial means. For families in a particularly constrained financial situation, the subsidy for the same costs may be increased by 5 to 10 per cent.

406. The Federal Act of 17 December 1993 concerning the encouragement of home ownership through professionally administered provident funds is aimed at promoting home ownership.

4. Social security benefits

407. Among the social security benefits which might be considered relevant here, mention should be made of the various allowances for children and orphans payable under different social insurance funds:

(a) Child allowances payable to old-age or disability pensioners for dependent children (AVS/AI);

(b) Child allowances payable under the Occupational Insurance Act;

(c) Orphan's allowances payable under old-age and survivors' insurance;

(d) Orphan's allowances payable under accident insurance;

(e) Orphan's allowances payable under occupational insurance schemes.

408. With regard to unemployment insurance, the daily allowances for married persons and persons classified as such are supplemented by an amount corresponding to the child allowances and vocational training allowances, calculated on a daily basis, to which they would be entitled if they were employed.

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[96] See article 11 for greater detail.

5. Advisory centres

409. In order to enable parents to seek advice from ad hoc bodies, various structures have been set up, such as advisory services for mothers, educational and vocational guidance services, as well as actual family therapy and counselling services. Pursuant to the Federal Act concerning pregnancy advisory centres, dated 9 October 1981, the cantons have set up family planning and advisory offices which may be approached free of charge. Furthermore, article 171 of the Civil Code enjoins the cantons to provide couples with an advisory office to deal with any problems that arise in their life together or in their role as parents. The cantons are free to establish such an office themselves or to subsidize one. In connection with the pre-draft revision of the Civil Code as it pertains to marriage, divorce and filiation, it is envisaged that the cantons should establish mediation offices whose function would be to offer spouses information on divorce and help them to reach an amicable settlement. As in the case of the advisory offices, the cantons are free to either manage these mediation offices themselves or to subsidize them.

6. Child-minding services

410. Child-minding and family assistance services and facilities are essentially a matter for the cantons, the communes, private organizations and enterprises. Mention should also be made of the "day mother" organizations, which are meeting an ever increasing share of child-care needs.[97] At present, however, the number of places available in crèches, kindergartens and other child-minding facilities is insufficient to meet the demand. There is no legal entitlement, in Switzerland, to a place in a child-minding institution. In overall terms, the distribution of such institutions is extremely uneven between the towns, which are well supplied, and the heavily populated suburban communes, which are often poorly supplied. The small cantons with a high agricultural population are almost totally deprived of such institutions.

411. These institutions are, generally speaking, heavily subsidized by the cantons and the communes. In addition, the federal State grants subsidies to umbrella organizations responsible for the organization and coordination of different services. It thus contributes indirectly to their development.

412. In addition to child-minding institutions, there also exist public social services. These fall within the exclusive competence of the cantons and the communes. One of their tasks is to advise and support families with children, especially mothers who are raising their children alone.

7. Private organizations

413. In addition to the aforementioned facilities, there are also private social services, organizations and charitable agencies. Mention must also be made of the role of the many private organizations working in the realm of family affairs, principally Pro Familia, Family Aid, Pro Juventute, the Popular Movement for Families, the Swiss Federation of Parents' Organizations, the Swiss Forum of Parents' Organizations, the Swiss Federation of Single-Parent Families and a number of advisory centres for mixed-nationality couples. Some of these associations receive State subsidies.

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[97] Report of the Federal Commission for Women's Issues, "*Structures d'acceuil pour les enfants*" (Child-minding facilities), 1992.

8. Cantonal and federal structures

414. Apart from the legislation concerning family allowances and the taxation of couples, etc., several cantons are becoming increasingly conscious of their responsibilities in family matters. Some, for example, have set up a Family Council (Jura and Neuchâtel) or a Family Assistance Fund (Vaud and Valais).

415. At the federal level, a Parliamentary Group of Federal Chambers for Family Policy has been working since 1983 to protect the interests of the family. The Federal Administration has a "centre for family matters" mainly responsible for tasks linked with federal or cantonal family allowances and family policy. Parliamentary interventions calling for the creation of a permanent scientific entity responsible for family matters have been tabled and approved.

9. Position of disadvantaged families

416. In overall terms, these measures to protect and support the family are intended for all families in all their different forms. Family benefits are granted, in principle, to every type of family, regardless of its form of organization. Generally speaking, the essential factor taken into account is the presence of children.

417. Even if there are no families that are totally deprived of support and assistance, some categories may nevertheless be disadvantaged. This is the case, for example, where family allowances are concerned since these depend on the occupational status of the person with care of the children. A large proportion of self-employed persons as well as persons who are not gainfully occupied are not entitled to family allowances in the majority of the cantons.

418. Part-time employees are also disadvantaged since, in most cantons, they only receive partial allowances. Single-parent families are therefore disadvantaged because this type of working arrangement is common in their case. Single mothers bringing up their children alone are the most directly threatened by poverty.

419. It should also be stressed that, in their amount, the allowances cover only part of the costs of child care.

420. In order to improve this situation, a parliamentary initiative has been launched, calling for a federal solution to the problem of family allowances whereby each child would give entitlement to a child allowance of at least 200 francs per month. An expert subcommittee has accordingly been entrusted by the Social Security and Public Health Committee of the National Council to prepare a draft law on the subject.

421. For families experiencing particular difficulties, assistance is provided through the social aid (public welfare) granted by the cantons and the communes. In the case of persons in this category without any income or with an insufficient income or persons who have exhausted their unemployment benefit entitlement, the aim is to ensure a decent income to provide for the needs of all concerned. As far as possible, an endeavour is also made to allow children to remain within the family. It should also be pointed out that when one or both of the parents fail to meet their maintenance obligations, the cantons have discretion either to assist the other parent free of charge in securing the payment of the maintenance benefits, or to pay advances for child maintenance (art. 290 to 293 of the Civil Code). For this purpose, the cantons are required to establish an office responsible for collection and advance payment of maintenance allowances.

422. There are other services, such as the social services or youth welfare services, which are offered to families by the cantons or the communes. In addition to structures established by the State authorities and private organizations, there also exist numerous self-help organizations whose various spheres of activity cover all the problem issues connected with children and the family. There are over 70 public and private agencies

offering assistance to aliens which are engaged in the more general domain of the social integration of foreign workers and their families.

E. Protection of maternity

423. Notwithstanding article 34 *quinquies* of the Federal Constitution, which gives the federal State the mandate to establish maternity insurance, the requisite implementing legislation has not yet been passed. A number of draft laws aimed at the introduction of maternity leave have come to grief in referendums. The 1970 people's initiative "for better sickness insurance" and the Federal Council's alternative draft, which contained a draft law on maternity welfare, were rejected by a majority of the people and all of the cantons in 1974. The 1980 initiative "for effective maternity welfare" was rejected by the people and all the cantons in a referendum in 1984. Finally, the revised sickness insurance legislation, which envisaged a system of maternity benefits, was also rejected in a referendum in 1987.

424. The Federal Council announced a new attempt and included maternity insurance in its 1991-1995 Legislature Programme as a subject of the Programming Framework for 1995. A preliminary bill of the Federal Act concerning maternity insurance was accordingly submitted for consideration in June 1994, and the results of this procedure are currently being examined by the Federal Department of the Interior. This preliminary bill proposes the establishment of compulsory and independent social insurance essentially envisaging an allowance for loss of earnings during maternity leave of 16 weeks for all women engaged in gainful occupations, i.e. for self-employed and wage-earning workers. It also provides for leave of four weeks in the event of adoption for wage-earning or self-employed mothers or fathers. As a second stage of the process, consideration is to be given to maternity benefits for mothers not engaged in gainful occupations, to hardship benefits and also to the possible introduction of parental leave.

1. Protection of maternity at the Federal level

425. Maternity welfare is currently governed by the Labour Act (LTr), the tenth title of the Code of Obligations (CO), the Federal Act concerning sickness insurance (LAMA) and the relevant provisions applicable in the public sector. Some cantonal labour codes also contain provisions of relevance. The aforementioned laws are not identical in their scope of application, which renders our maternity welfare system singularly complicated. The Labour Act excludes the following, in particular, from its scope of application: agriculture, private households, home-based work and also the federal, cantonal and communal government authorities. The provisions of the Code of Obligations enter into effect as soon as there is a private-law contract of labour, while LAMA only covers women who are insured with a recognized sickness insurance fund.[98] Maternity benefits therefore, as things stand at present, vary according to the individual insurance schemes, and the protection of workers depends on the branch of the economy and the particular enterprise in which they are employed.

(a) The right to work

426. Under article 366c, paragraph 1 (c), of the Code of Obligations, an employer may not cancel a contract of labour at any point during the pregnancy or the 16 weeks following childbirth (as of 1 January 1989).

427. With the exception of cases where the female employee is covered by a collective labour agreement which provides for compulsory daily insurance payments, the employer has an obligation to continue to pay the

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[98] It should be pointed out here that insurance is compulsory under the new Act concerning sickness insurance (LAMal).

salary as in the case of sickness, i.e. for at least three weeks during the first year of service and then for a longer period established equitably (CO, art. 324a). This longer period of salary payment has been determined by the courts according to three "scales" (the Bern, Basel and Zurich scales), which grant a period of salary payment which increases according to the years of service completed with the same employer. The scale applicable is determined according to judicial jurisdiction (the court of the defendant's place of residence or place of business or of the household for which the employee works). The Bern scale, however, is by far the most widely adopted nationally.

428. The employer may not reduce a female employee's entitlement to leave proportionately for an absence of two months due to pregnancy or childbirth (CO, art. 329b, subpara. 3). After the third complete month of absence due to pregnancy or childbirth, the employer has the right to reduce the worker's annual leave by one twelfth per complete month of absence.

429. As regards female employees covered by the Labour Act, there is no guaranteed paid maternity leave in the strict sense. Under LTr, article 35, paragraph 2, mothers who have recently given birth may not be employed for eight weeks after the birth. At their request the employer may, however, reduce this period to six weeks provided that they obtain a medical certificate attesting to their renewed fitness for work. This prohibition does not apply to the period preceding childbirth, but female employees may be exempted from working during this period if they produce a medical certificate attesting that they are unfit for work. Nursing mothers may only be employed with their consent. The employer must allow them the time they require for breast-feeding.

430. Pregnant women may not be employed unless they give their consent and never beyond normal working hours. Simply by giving notice, they can excuse themselves from work or quit their job (LTr, art. 35, para. 1). Neither may they be employed in work known to be harmful to health or to the pregnancy, and they will be exempted, on their request, from work which is too arduous for them (OLT1, art. 67). Moreover, they may not be employed outside the working day without their consent (OLT1, art. 72).

(b) Sickness insurance

431. Sickness insurance covers costs relating to pregnancy and childbirth provided the insurance was taken out at least 270 days before confinement. No deductible or cost sharing may be applied. The benefits payable in the case of an insured woman who has given birth also include a daily contribution of five francs to the cost of the infant's care during its stay in a hospital establishment. This contribution increases to ten francs if the infant requires treatment during the 10 weeks following its birth. For costs which are not covered by the mother's insurance, personal insurance may be taken out for the infant from the first day of its life.

432. Only four medical check-ups during pregnancy and one after the birth are covered. Women who require further medical treatment during pregnancy have to pay the deductible and the contribution to ordinary costs. If the insured mother nurses her child for 10 weeks, she receives a one-time nursing allowance of 50 francs (position as at 1 January 1995).

433. As regards the daily allowance, the insurance funds provide the same benefits as in the case of sickness, and do so for a period of ten weeks, at least six being after the birth. The minimum amount of the daily allowance is two francs. If a female employee does not have her salary insured by her employer, the premiums for adequate daily insurance coverage are extremely costly.

(c) Collective labour agreements

434. More favourable provisions are foreseen by some cantonal labour codes. Their aim is to extend the scope of the minimum rights recognized by the Code of Obligations and the Labour Act. Essentially, they provide for

daily insurance allowances, the premiums for which are paid by the employees and the employers. Basically, insurance of this kind pays maternity benefits in conformity with the LAMA. Thus, they cover the woman's salary during her absence for childbirth, i.e. for a period of three weeks to four months or more (depending on the years of service completed) and up to 16 weeks in the public sector.

2. Protection of maternity at the cantonal level

435. Nine cantons provide for hardship benefits in connection with maternity (Fribourg, Graubünden, Lucerne, St. Gallen, Glarus, Schaffhausen, Vaud, Zug and Zurich; Neuchâtel is on the point of introducing a maternity benefit scheme). These benefits are subject to the condition that the beneficiary's income should not be in excess of a certain limit, and they are paid, according to the canton, for a period ranging from 6 to 24 months. The beneficiaries do not, however, have any guarantee of being able to return to their place of work once their entitlement to the benefits has been exhausted.

F. Protection of the child

1. General

436. The notion of "child" has a dual meaning. On the one hand, it denotes a young person, in which sense it is synonymous with "minor", while, on the other, it applies to any person in relation to his or her parents. It is the former meaning of "minor" that we have adopted here.

437. In Swiss civil law, any person who has not completed 20 years of age is considered a minor. The revised Civil Code, which entered into effect on 1 January 1996, lowered the age of civil majority to 18 years, thus bringing it into harmony with the age of political majority (the right to vote and stand for election), which has been set at 18 years since 1993.

438. The minor is subject to parental authority (art. 296, para. 1, of the Civil Code). If the parents are deceased or if this authority has been withdrawn from them (arts. 310 and 311 of the Civil Code), a guardian is appointed (arts. 368, para. 1, and 405 of the Civil Code). Parental authority means the legal responsibility of parents to provide for the child's care and education, to represent it with respect to third parties and to administer its property. This authority is based on the best interests of the child and varies as the child grows up. Article 301, paragraph 2, of the Civil Code therefore provides expressly that parents shall allow the child freedom to organize its life according to its level of maturity and, as far as possible, shall also take account of its opinion in matters of importance. Irrespective of parental authority, parents have an absolute obligation to ensure the child's maintenance until it has come of age. After that time, subject to the relevant legal provisions, parents are bound by the maintenance obligation until the child has completed its education (art. 277 of the Civil Code).

439. In cases where the parents are not married, parental authority rests in principle with the mother, unless a different solution is dictated by the best interests of the child (art. 298 of the Civil Code). In the event of a divorce, the judge awards parental authority to one of the parents in the light of all the important circumstances affecting the child's welfare. The preliminary draft revision of the divorce law introduces the possibility of assigning joint parental authority to divorced parents.

440. The Civil Code specifies three types of exception to parental authority: conditional, unconditional and special civil capacity. Swiss law applies a special system with respect to civil capacity, known as the "graduated capacity system". *Conditional capacity* stems from article 19, paragraph 1, of the Civil Code, whereby minors capable of discernment may enter into obligations by their own acts with the consent of their legal representative. Furthermore, under paragraph 3, they are liable for any damage which they may cause by their illicit acts. The *unconditional capacity* of minors is their capacity, foreseen in the second paragraph of this same

provision, to acquire for no cost whatsoever and exercise their strictly personal rights. These are rights which are very closely linked to each individual's personal identity, such that freedom of self-determination is particularly important (for example, the right to life, the right to physical, mental and moral integrity, the right to privacy and the right to freedom of movement). The exercise of these rights consists not only in the freedom to carry out legal transactions but also the capacity to have them enforced through the judicial system. This general standard is fleshed out by a set of special provisions which either require the consent of the legal representative,[99] or set a minimum age for the exercise of certain rights.[100] *Special capacity* relates to certain private assets which minors may administer or which they may enjoy alone: children reach the age of religious majority at 16 years (art. 303, para. 3, of the Civil Code) and have the right to enjoy the proceeds from their labour (art. 323 of the Civil Code).

441. One of the guiding principles of Swiss family law is the good of the child, which is a principle that both the parents and the authorities must respect. Thus, in its title headed "Protection of the child" (art. 307 *et seq.* of the Civil Code), the Civil Code stipulates that the supervisory authorities shall take the necessary steps to protect the child if its development is threatened and if the mother and father are not remedying the situation or are totally unfit to do so. Measures which may be envisaged in this regard include, in particular, reminding the parents of their duties, providing information or instruction regarding the care, education or training of the child, appointing a person with the right of review and information, appointing a temporary guardian, withdrawing the right to control and care of a child, or even parental authority, and placing the child in the care of a guardian. In the most serious cases it is possible to order the child's placement in a suitable institution. Such decisions are open to appeal (art. 420 of the Civil Code) and judicial review is guaranteed.[101]

442. The good of the child is also a decisive factor in the adoption procedure. A child may only be adopted if its future adoptive parents have cared for it and provided for its education for a period of at least two years. If the child is capable of discernment, the adoption may take place only with its consent. Furthermore, the consent of the biological mother and father of the adoptive child are also necessary. With adoption, the child acquires the legal status of a child of its adoptive parents, including freedom of the commune and canton and Swiss nationality.

443. The criminal law also protects the child against various forms of abuse and exploitation. Article 127 of the Penal Code, for example, punishes assault causing bodily harm as well as the endangering of life or health and the abandonment of a defenceless person. The Penal Code also punishes sexual offences and protects the sexual development of the child up to the age of 16 years (art. 187 of the Penal Code). Article 188 of the Penal Code punishes any person who takes advantage of a child's relationship of dependence in his or her regard by abusing it sexually, and article 213 of the Penal Code punishes incest. The number of cases of sexual abuse committed against minors is estimated at 40,000 to 50,000 per year. A report by the Working Group on Maltreated Children,[102] published in 1992, made it possible to assess the extent of the phenomenon and put forward a number of specific recommendations addressed to both the authorities and the professionals

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[99] For example, the legal representative's consent is necessary for a minor to become engaged (art. 90, para. 2, of the Civil Code) and for recognition of a child (art. 260, para. 2, of the Civil Code).

[100] For example, a minor must be at least 16 years old in order to appeal to the court if he is deprived of liberty for welfare purposes (art. 314a, para. 2, of the Civil Code).

[101] Cf. ATF 118 Ia 473 *et seq.*

[102] *"Enfance maltraitée en Suisse"* (Maltreated children in Switzerland), final report submitted to the Head of the Federal Department of the Interior by the Working Group on Maltreated Children, Bern, 1992.

concerned. In 1995, the Federal Council took a position on the report and published a catalogue of practical measures (FF 1995 IV 1). Public awareness campaigns have been launched and an emergency telephone line called the "Help-o-fon", has been established. This enables children and adolescents throughout Switzerland to find help round the clock (Tel.: 157.00.57).

444. The international abduction of children is a matter of great concern to the federal authorities. A central authority with regard to international child abduction has been set up within the Federal Justice Office. Each year it registers between 70 and 100 cases of abduction. The authorities offer assistance in securing the return of children who have been illegally abducted and taken abroad.

2. Protection of young workers

445. Under the Labour Act, the minimum age at which young people may be employed is set at 15 years (LTr, art. 30, para. 1), with certain exceptions whereby young people of 13 or 14 years of age may be hired for work of a physically undemanding nature. Young people over the age of 13 may also be engaged "to run errands outside the enterprise or to give a helping hand in sports activities, or to do light jobs in retail shops or forestry enterprises" (OLT1, art. 59). Such work by young people is allowed only during working hours between 6 a.m. and 8 p.m. and, exceptionally, on Sundays and public holidays also, certain conditions being stipulated regarding the number of hours worked per day. The law also specifies particular types of work which are prohibited for young people because of their harmful effects on physical health (OLT1, arts. 54 and 55) or moral health (OLT1, art. 56).

446. The Labour Act also accords increased protection to young workers aged between 15 and 19 years and to apprentices up to the age of 20 years. The provisions providing for such protection apply to all young people covered by this law and do not, therefore, apply to children employed in family firms, except as regards the provisions concerning minimum age, hours of work and rest periods or activities forbidden for young workers in order to protect their physical and mental health.

447. The maximum length of the working day of young workers established by the Labour Act may at the very most be equal to that of other workers in the same enterprise or, in the absence of other workers, the length of the working day which is customary locally, provided that this does not exceed nine hours (LTr, art. 31). The rest period between working days must be at least 12 consecutive hours. Night and Sunday work, however, is prohibited in principle for young workers, with exemptions being possible most notably for vocational training. The Code of Obligations, in addition, governs the contractual obligations between employer and employee. The employer, for example, is required to give the employee at least five weeks of leave per year up to the age of 20 years. Furthermore, up to the age of 30 years the employer must grant unpaid leave of one week per calendar year for extracurricular youth activities (CO, art. 329e).

448. The special provisions contained in the Code of Obligations with regard to articles of apprenticeship apply to all apprentices. These provisions lay down special obligations on the part of the master responsible for the apprentice, especially with regard to his or her training. In particular, the apprentice may not be engaged in work which is unrelated to his or her established trade or occupation or in piecework unless such piecework has a bearing on the exercise of the trade or occupation and provided that the apprentice's training is not thereby compromised (CO, art. 345a, para. 4).

XI. ARTICLE 11: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

A. Principal instruments applicable

449. The following are the principal instruments applicable:

(a) National instruments:

(i) Standard of living:

Federal Constitution, articles 34 *quater* and 48;

Loi fédérale sur les prestations complémentaires à l'assurance-vieillesse, survivants et invalidité (Federal Act concerning old-age, survivors' and disability supplementary benefits) (LPC), dated 19 March 1965;

Loi fédérale sur la compétence en matière d'assistance des personnes dans le besoin (Loi fédérale en matière d'assistance) (Federal Act concerning competence with respect to assistance for persons in need, Federal Assistance Act) (LAS), dated 24 June 1977;

(ii) Food:

Federal Constitution, article 69;

Loi fédérale sur les denrées alimentaires et les objets usuels (Federal Act concerning foodstuffs and staple items) (LDA), dated 9 October 1992;

(iii) Housing:

Federal Constitution, articles 22 *ter*, 22 *quater*, 34 *sexies* and 34 *septies*;

Loi fédérale sur l'expropriation (Federal Act concerning expropriation), dated 20 June 1930;

Loi fédérale concernant l'amélioration du logement dans les régions de montagne (Federal Act concerning the improvement of housing in mountain regions) (LALM), dated 20 March 1970;

Loi fédérale encourageant la construction et l'accession à la propriété de logements (Federal Act concerning promotion of residential construction and home ownership) (LCAP), dated 4 October 1974;

Loi fédérale sur l'aménagement du territoire (Federal Act concerning town and country planning) (LAT), dated 22 June 1979;

Loi fédérale sur l'encouragement à la propriété du logement au moyen de la prévoyance professionnelle (Federal Act concerning promotion of home ownership by means of occupational insurance), dated 17 December 1993;

Loi fédérale sur les crédits d'investissement dans l'agriculture et l'aide aux exploitations paysannes (Federal Act concerning investment credits in agriculture and assistance to farmholdings) (LCI), dated 23 March 1962;

Ordonnance concernant le coût de construction des nouveaux logements (Order concerning the cost of building new homes), dated 17 December 1986;

Ordonnance sur l'aménagement du territoire (Order concerning land development), dated 2 October 1989;

Ordonnance concernant la surface nette habitable, le nombre et la dimension des pièces (programme), l'aménagement de la cuisine et l'équipement sanitaire (Order concerning net living space, the number and size of rooms (programme), kitchen improvements and sanitary installations), dated 12 May 1989;

Ordonnance relative aux limites de revenu et de fortune pour les abaissements supplémentaires relatifs à la construction de logements (Order concerning income and wealth limits for supplementary reductions in connection with home building), dated 24 September 1993.

B. Standard of living and poverty

1. Poverty in Switzerland

450. Switzerland is an industrialized country with a high standard of living. The per capita GDP in 1993 was US$ 33,813,[103] which puts Switzerland in first place among the OECD countries. There are very large differences in the distribution of wealth among the various cantons. If we examine the distribution of income among the population, we find that the poorest 20 per cent of households have 5.2 per cent of all income, whereas the richest 20 per cent possess 44.6 per cent of all household income.[104]

451. Poverty exists and persists in Switzerland despite the country's prosperity. Awareness of this situation began to take hold towards the end of the 1980s, when the first cantonal studies[105] revealed that between 5 and 15 per cent of the population, i.e. between 500,000 and 700,000 people (depending on the definition of poverty used) were affected by poverty. It was also thought necessary to conduct a federal study on this subject and the results of the survey, undertaken by the Swiss National Scientific Research Fund,[106] should be published at the end of 1995. The persons most affected by this "new poverty" are the elderly, divorced women, women bringing

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[103] At current prices and converted into US dollars at current exchange rates.

[104] *World Economic Report* 1994.

[105] C. Marazzi (1986), *La Povertà in Ticino*, Department of Social Works, Bellinzona; F. Hainard et al. (1990), *Avons-nous des pauvres? Enquête sur la précarité et la pauvreté dans le canton de Neuchâtel* (Do we have poor people?, Survey on poverty and lack of security in the canton of Neuchâtel), EDES, Neuchâtel; M.-F. Perruchoud-Massy (1991), *La pauvreté en Valais* (Poverty in Valais), Department of Social Affairs, Sion; J.-P. Joliat (1991), *Pauvreté dans le canton du Jura* (Poverty in the canton of Jura), Social Assistance Department, Delémont; W. Ulrich and J. Binder (1992), *Armut im Kanton Bern, Bericht über die kantonale Armutsstudie* (Poverty in the canton of Bern, Report on the cantonal poverty study), Department of Health and Welfare, Bern; P. Farago and P. Füglisalter (1992), *Armut verhindern, Die Zürcher Armutsstudie: Ergebnisse und sozialpolitische Vorschläge* (Preventing poverty, The Zurich Poverty Survey: Findings and sociopolitical suggestions), Department of Welfare of the canton of Zurich; P. Füglisalter and M. Hohl (1991), *Armut und Einkommensschwäche im Kanton St. Gall* (Poverty and low income in the canton of St. Gallen), Bern (city).

[106] This survey forms part of the PNR 29 national research programme entitled: "*Changement des modes de vie et avenir de la sécurité sociale*" (Changes in lifestyle and the future of social security).

up their children alone, unemployed persons who have exhausted their benefit entitlement and persons with social integration problems.

452. A survey carried out in 1992 by the Swiss National Scientific Research Fund among 25 social services showed that the main causes of poverty are:

Unemployment	34%
Drug addiction	19%
Inadequate income	14%
Single-parent family status	14%
Delayed decision on social welfare	13%
Psychological problems	12%
Limited ability to engage in gainful activity	11%
Separation/divorce	11%

453. There is no official poverty threshold at either the cantonal or the federal level. However, there are several income limits, established either by legislation or by institutions, which are de facto indicators equivalent to minimum subsistence levels. The concept of untouchable income or tax-exempt income may therefore be used as indicators. The two most important indicators are:[107]

(a) AVS/AI extraordinary pensions: the income limits for entitlement to extraordinary pensions are 14,800 francs for a single person and 22,200 francs for a couple (as at 1 January 1995);

(b) AVS/AI supplementary benefits: these guarantee an income level of 16,660 francs for a single person and 24,990 francs for a couple (as at 1 January 1995).

454. Some cantonal studies have established income limits corresponding to a poverty threshold.

Table 16. Poverty threshold used in different cantonal studies

Canton	Year	Income limits (francs)	Poverty rate (%)	
			Households	Persons
Ticino[1]	1982	9,450 (50% mdicu)*	15.7	14.5
Bern[2]	1986	16,000 (40-60% mdicu)	23.1 - 24.0	20.4 - 21.6
Neuchâtel[3]	1987	12,926 (50% mdicu)	19.3	
St. Gallen[4]	1987	18,233 (50% mdicu)	16.1	14.7
Zurich[4]	1988	26,200 (50% mdicu)		20.9
Jura[3]	1989	11,050 (50% mdicu)	15.1	10.8
Valais[4]	1989/90	12,825 (50% mdicu)	14.9	

Source: Cantonal poverty studies (see note 105).

* Mdicu: mean disposable income per consumption unit (official international threshold, ILO, EEC).

[1] Without wealth-related deduction.

[2] After wealth-related deduction including students/apprentices.

[3] Without wealth-related deduction, excluding students/apprentices.

[4] After wealth-related deduction, excluding students/apprentices.

[107] These sums are exclusive of sickness insurance contributions and an appreciable part of the rent.

2. Social welfare

455. Alongside the system of social insurance, the main means of combating poverty is social welfare or public assistance.

456. As we saw when we looked at article 9, the social insurance system is based on the principle of causality in that the occurrence of a "damage" (sickness, disability or old age) is the prerequisite for the granting of benefits. Pursuant to the Constitution, the old-age, survivors' and disability insurance (AVS/AI) must cover subsistence requirements "to an appropriate extent" (art. 34 *quater*, para. 2, Constitution). The relatively low amounts of the single AVS/AI benefits do not, however, allow this aim to be fully achieved. The Supplementary Benefits Act, adopted in 1966, provides for the payment of benefits corresponding to the difference between the individual's income and a minimum income level established by law (16,660 francs for a single person and 24,990 francs for a couple). The payment of supplementary benefits requires administrative action on the part of the individual, which explains why some elderly persons who would be entitled to supplementary benefits fail to draw them. Approximately one AVS pension beneficiary in seven and one AI pension beneficiary in four receive supplementary benefits.

457. Social welfare is a supplementary and subsidiary mechanism that provides support only for those who are not covered or no longer covered by social insurance, or whose income is insufficient. Such welfare provides assistance and subsidies in cash and in kind, as well as intangible support in the form of advice, assistance and services.

458. Social welfare is the responsibility of each canton. Some cantonal constitutions deal with the right to welfare and this right is expressly laid down in two of them under social rights. The two cantons concerned are Basel-Country (para. 16 (1), which provides that "everyone has the right to receive the support and care and to have the resources that they need to live a life of dignity) and Bern (art. 29, para. 1, which provides that every person is entitled (...) to the necessary resources to live a life of dignity). All cantons have legislated on social assistance or welfare. Such legislation is often very detailed, sometimes accompanied by supplementary instruments (decrees, regulations, etc.). None the less, implementation is left almost exclusively to the communes, which may enact their own regulatory standards. The situation therefore varies greatly from one canton to the next, not only as regards the amount of support provided, but also, and above all, the conditions under which it is provided.

459. At the federal level, although the amended article 48 of the Federal Constitution, which came into effect on 1 January 1979, deals with welfare, it in fact merely divides up competences among the cantons. Under the terms of article 48, it is the canton of domicile, and no longer the canton of origin, that is responsible for providing needy individuals with assistance. The Confederation is authorized to settle matters of recourse against the canton of prior domicile or the canton of origin. The article contains a rule regarding competence applicable to the cantons; it indicates to a needy individual which canton has authority to offer him assistance. Furthermore, such assistance continues to be governed by cantonal legislation, with the exception of the federal stipulations regarding assistance to Swiss citizens abroad, the provisions regarding refugee and stateless persons and the assistance agreements concluded between Switzerland and other States. This competence rule also applies to support for aliens. The Federal Act concerning competence with respect to assistance for persons in need (LAS) of 24 June 1977, which came into effect on 1 January 1979, establishes a set of federal statutory regulations on the obligation to provide assistance. This LAS seeks to provide a better definition of the principles set out in article 48 of the Federal Constitution, and in particular to define more precisely such concepts as assistance, sojourn, canton of domicile and canton of origin.

460. However, there are certain limits to social welfare, principally due to the recent and continuing increase in the number of unemployed persons who have exhausted their benefit entitlement. Although many cantons

have established temporary employment programmes in order to re-establish entitlement to benefits, an ever-increasing number of unemployed persons whose entitlement has lapsed are seeking social welfare. At the federal level, a parliamentary initiative to incorporate in the Constitution the right to a minimum level of subsistence and social support, as well as to increase the competences of the Confederation in this field is currently under discussion. A number of measures have already been taken at the cantonal level. The canton of Ticino, for instance, was the first to establish a minimum income to promote integration that benefits not only the unemployed but anyone in need. In Geneva, a minimum income level for social support offers an income of 1,151 francs per month for a single person and 2,532 francs for a couple to unemployed persons whose entitlement has lapsed. By the end of April, 660 persons were receiving this benefit, including 370 single persons, 123 two-person households (in some cases a mother and child), 48 three-person households and 72 households of four or more persons. Other cantons are also examining the possibility of introducing such a minimum income, in conjunction with a contract and employment-entry programmes.

C. Right to adequate food

461. Access to a varied diet is guaranteed in Switzerland. The question of the right to food arises therefore less in terms of quantity (sufficient food) than in terms of quality (healthy food). The average daily food intake between 1988 and 1990 was 3,508 calories, or 95.2 grams of proteins per person per day (36 per cent vegetable products and 64 per cent animal products). The trend in eating habits over the last 40 years has been towards a marked decrease in the consumption of carbohydrate-rich products (potatoes, cereals and bread), with a switch to greater consumption of dairy products and meat. The proportion of fats, which account for about 40 per cent of the total energy absorbed, is too high.

Table 17. Overall trend in eating habits in Switzerland (consumption in kilograms per person)

Decreasing consumption	**1950**	**1970**	**1989**
Cereals and rice	130	80	75
Potatoes	100	53	45
Vegetables	80	60	75
Milk	220	140	110
Increasing consumption	**1950**	**1970**	**1989**
Tropical and citrus fruit	18	24	33
Meat	40	70	85
Eggs	9	11	13
Fish	2	4	8
Cheese	8	9	14
Yoghurt	2	7	18
Cream (including cream for coffee)	2	4	9

Source: Sieber, 1991.

1. Public information

462. The third report on nutrition in Switzerland was published in 1991. It provides a thorough and detailed analysis of the state of the nation's nutrition and related problems. The Secretariat of the Swiss Union of Small Farmholders publishes yearly figures for consumption of agricultural foodstuffs. Information on food trends was gathered from a sample of the population in the cantons of Vaud, Ticino and Fribourg as part of the MONICA study for WHO. The EURONUT study also provided information on a restricted sample of persons

between the ages of 70 and 75 years in three medium-sized towns, representing the three different language regions of the country.

463. The new foodstuffs act requires the authorities to inform the public, particularly with regard to scientific knowledge of general interest in the nutrition field.

2. Nutritional awareness

464. In response to the Swiss Health Survey, conducted by the Federal Statistical Office, 54.5 per cent of men and 73.9 per cent of women said that they were careful about their diet. This figure is higher in the German- and Italian-speaking regions of Switzerland than it is in the French-speaking region. It also varies according to educational level: the more educated the person, the greater the attention paid to diet. The two nutritional principles most frequently mentioned by those questioned were: "not too much fat" (20.7 per cent) and "enough fruit and vegetables" (20 per cent). The first principle is mentioned more often in Ticino and French-speaking Switzerland, whereas the second is mentioned more often by German-speaking Swiss. Although the Swiss public is well-informed about healthy eating, there is a gap between knowledge and behaviour: awareness of the principles has virtually no effect on the quantities consumed.

465. Awareness campaigns to promote healthy eating have been conducted in many cantons. For instance, in 1985 the canton of Ticino launched a primary prevention programme entitled "the healthy plate" to encourage healthy eating. This initiative, backed up by an information campaign in the media (Italian-speaking Swiss television), was carried out in conjunction with restaurant owners, who undertook to suggest nutritionally healthy dishes. There have also been various initiatives in the education sector (recommendations for school canteens, healthy "aperitifs" and "snacks" in schools, etc.). The campaign subsequently spread to restaurants, and the public at large, with recipe collections, information open days, courses, etc. A survey in Ticino in 1989 indicated that 42 per cent of the population had changed their eating habits for health reasons.

466. The situation regarding dietary education in schools is very varied because the individual cantons have responsibility for education. A survey carried out in 1988 indicated that primary-level curricula paid scant attention to diet. However, the subject of food is covered in secondary I education, as part of domestic science courses, which are compulsory in 17 cantons but in three cantons compulsory in certain grades only. As far as course content is concerned, the domestic science programmes place great emphasis on the practical preparation of meals, nutritional awareness and the relationship between food and health.

3. Food hygiene

467. Food hygiene is governed by the Federal Foodstuffs Act of 9 October 1992, which has three aims:

(a) To protect consumers from foodstuffs that may endanger their health;

(b) To ensure that foodstuffs are kept in proper hygienic conditions;

(c) To protect the consumer against fraud in respect of foodstuffs.

468. The Act also stipulates the information that must be given on foodstuff labels: origin, description and composition. The Federal Council may also decide that additional information should be provided on storage life, method of production and nutritional value. Implementation of the Act falls within the competence of the cantons, which are responsible for establishing a cantonal laboratory administered by a specialist (cantonal chemist).

469. In spite of these precautions, Switzerland has not been entirely free of cases of food poisoning (salmonella, listeria). In 1992, for instance, 7,732 cases of salmonella poisoning were reported. These bacteria develop during the stages of storage, conservation or preparation of food. It is necessary, therefore, to organize consumer awareness campaigns on food conservation and preparation.

4. Agricultural and food policy

470. Switzerland's agricultural policy is designed to enable the primary sector to fulfil to the highest possible degree its function of contributing substantially to the supply of healthy, good-quality products at reasonable prices and in conformity with safety standards. The function of farming is not, however, merely to produce agricultural foodstuffs but also to utilize and safeguard the natural bases of life, to preserve and maintain cultivated land and to contribute to economic and cultural life in the countryside.

471. In order to guarantee safe food supplies for the population, a ten-year food plan has been elaborated by the Confederation to achieve self-sufficiency in food in the event of an interruption of imports. This plan was developed on the basis of the degree of Swiss food self-sufficiency. In 1991 the degree of self-sufficiency was 51 per cent for proteins of plant origin and 93 per cent for proteins of animal origin. National agricultural production covers two thirds of the country's calorie requirements, although part of the production of foodstuffs of animal origin is made possible only by the import of feed. This means that, in the event of import difficulties, Switzerland would be forced to cut back on products of animal origin and to intensify cereal crop cultivation. This would be done according to a three-stage strategy:

(a) Rationing of foodstuffs;

(b) Focusing of production and consumption more on plant products that can be consumed directly;

(c) Use of reserves to supply the population during the transitional period.

D. Right to housing

1. Housing situation

472. The 1990 Federal Housing Census showed that Switzerland had some three million dwellings. Individual houses accounted for 22 per cent of all dwellings; this percentage is higher than the average in the rural cantons and lower in the urban cantons. Nearly half of all dwellings have four or more rooms, while there is a greater proportion of small dwellings (one to two rooms) in the urban cantons. Two thirds of dwellings were built after 1947.

473. For a long time there has been a severe shortage on the housing market in Switzerland. The market is currently easing to a certain extent, with a clear increase in the proportion of vacant dwellings: 0.92 per cent in 1993 (0.70 per cent in 1992). There are more empty dwellings in the towns, even though the proportion in towns overall is lower than the average for Switzerland (0.78 per cent). In this respect, the situation in Geneva is particularly surprising: whereas the proportion of vacant dwellings was 0.2 per cent in 1985, it had risen to 1.7 per cent by July 1993. The vacant dwellings are mostly small dwellings with one or two rooms (29.7 per cent).

474. In 1993, 34,580 new dwellings were built and 54,063 building permits were issued. Compared with the preceding year, this represented a decrease in construction of 2.4 per cent, mainly with respect to individual houses. There was, however, a 4 per cent increase in the number of building permits issued in 1993. The net increase in dwellings in 1993 was 2.8 per cent less than in 1982.

475. The proportion of Swiss nationals who own their own homes—31.3 per cent in 1990—is low compared with the international averages. However, it has increased in recent decades: it was 28.1 per cent in 1970 and 29.9 per cent in 1980. There are wide gaps between town and country: the proportion of owner-occupied dwellings is only 24.3 per cent in the towns, as compared with 50.1 per cent in the rural areas. Although private individuals still make up the largest proportion of homeowners (66.75 per cent), the proportion of dwellings owned by associations and foundations has doubled (from 4 per cent in 1970 to 8 per cent in 1990).

476. In Switzerland, each dwelling accommodates 2.4 persons on average. In 1990, there was one room per 0.63 persons and each inhabitant had an average of 39 square metres of living space, a figure that has appreciably increased in recent decades (34 square metres in 1980).

477. More than 99 per cent of dwellings have a kitchen or kitchenette and 92 per cent a bath or shower. Seventy per cent of dwellings are heated by a central heating system using fuel oil, 15 per cent are heated by individual stoves, 11 per cent are linked to remote heating and 4 per cent have storey heating.

478. In 1992, the average rent for Switzerland as a whole, excluding costs, was 884 francs for a three-room dwelling and 1,103 francs for a four-room dwelling. Rents vary considerably from one canton to another. The amounts also vary according to the age of the dwelling: in the case of a dwelling built before 1947, the average rent is 788 francs for a three-room dwelling and 948 francs for a four-room dwelling, compared with 1,867 and 2,344 francs, respectively, for a dwelling built since May 1992.

2. Situation of vulnerable groups

479. Although the supply of accommodation is good overall, one of the weak points of the housing market is the high level of rents. Rent is the main item of expenditure for households.

480. The "Rent and Income 1990-1992" survey[108] shows that one household in six pays more than 25 per cent of its income in rent. However, more than half of households have a rental burden of less than 15 per cent. By and large, the problem of a very high rental burden affects only low-income households (income under 4,000 francs). A quarter of households whose monthly income is less than 2,000 Swiss francs spend 40 per cent or more of their income on rent and 35 per cent have a rental burden amounting to between 30 and 40 per cent of their income. In the next income bracket (2,000 to 4,000 francs), one household in six has a net rental burden of over 30 per cent. In the median income bracket (4,000 to 6,000 francs), which includes the largest proportion of households (28 per cent), the situation is more favourable: four fifths of households spend less than 20 per cent of their income on rent and half even pay less than 15 per cent.

481. A rental burden in excess of 25 per cent is twice as frequent among single-person households than larger households. A breakdown by type of household indicates that the following types are most affected by high rental burden:

- Single retired persons (48 per cent);
- Retired couples (24 per cent);
- Young single persons under the age of 25 (22 per cent);
- Single-parent families (19 per cent);

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[108] Frohmut Gerheuser, *Loyer et revenue 1990-1992, l'approvisionnement en logement des ménages locataires et coopérateurs* (Rent and Income 1990-1992, Supply of rental or cooperative-owned accommodation), *Bulletin du logement*, vol. 58, Bern, 1995. The rental burden is calculated in relation to net income.

- Single middle-aged persons (25-64 years of age: 14 per cent);
- Young families (under the age of 30) with two or more children (11 per cent).

482. In general, housing conditions are good in Switzerland. However, in 1990, a total of 872,736 persons lived in overcrowded dwellings, i.e. dwellings with less than one room per person. The "Income and Rent 1990-1992" survey showed that two main groups lived in high-density housing: families with three or more children and single-parent families.

Table 18. Number of people living in dwellings below the minimum comfort level in 1990

	Number of persons involved	As percentage of persons living in private households
Dwelling without hot water	38,123	0.6
Dwelling without heating	3,316	0.05
Overcrowded dwelling*	872,736	13.2
Temporary dwellings	7,823	0.1

Source: Federal Statistical Office.

* Dwelling with less than one room per person.

483. Examination of both rental burden and dwelling occupancy (table 19) shows that 6 per cent of households have the most advantageous combination, i.e. a low rental burden and a low occupancy rate. A good third of households have either a relatively large dwelling with a moderate rental burden (20 per cent), or a low rental burden but a moderate occupancy rate (16 per cent). Approximately the same number of households are in the median range (37 per cent). In all, almost four fifths of households enjoy appropriate and favourable conditions. In contrast to this, some households live in more unfavourable conditions, either because of a high occupancy rate, or because of a high rental burden but with a low occupancy rate. However, there are hardly any households that have both an unfavourable occupancy rate and a high rental burden. None the less, one group of households has a high occupancy rate combined with a moderate rental burden (4 per cent).

Table 19. Breakdown of households by rental burden and occupancy rate in 1990

	Rental burden			
Occupancy rate	<10%	10-<25%	>25%	Total
<0	2%	4%	0%	7%
0-1	16%	37%	8%	60%
>2	6%	20%	8%	33%
Total	24%	61%	15%	100%

Source: Rental and Income 1990-1992.

484. There are no official federal or cantonal statistics that provide a basis for assessing the situation of the homeless in Switzerland. A survey in five cities carried out with the assistance of local government and charitable associations yielded the following figures:

Table 20. Number of homeless persons, 1992 estimate

City	Persons receiving assistance from the welfare services	Persons not receiving assistance (estimate)
Basel	300	100-200
Bern	120-150	
Geneva	120-150	100-150
Lausanne (region)	40-50	250-300
Zurich	60-90	

Source: Report by Switzerland to WHO, "Health for all by the year 2000", 1993/94.

3. Housing legislation

485. A balanced housing policy must be based on good town and country planning. Swiss law in this area takes account, among other things, of interests related to housing. The right to housing is not guaranteed as such by the Federal Constitution. A popular initiative in 1967 proposed the inclusion of a new constitutional article establishing that "the Confederation recognizes the right to housing" and takes the necessary measures to guarantee that right for disadvantaged individuals. The initiative was rejected by popular vote in 1970.[109] At the cantonal level, however, the right to housing met with greater success. The cantonal constitution of the Jura states, for instance, that "the right to housing is recognized" as belonging to the social security responsibilities of the State. Other cantonal constitutions recognize this right as a social right.[110]

(a) Town and country planning

486. Article 22 *quater* of the Constitution, introduced in 1969, gives the Confederation competence limited to the principles of town and country planning. The article states that the aim of such planning is to achieve "judicious land use and rational settlement of the territory". To this end, it is the task of the Confederation to legislate regarding principles, while the cantons are required to establish development plans, within the scope of their competence. The Confederation is also responsible for coordinating the canton's efforts.

487. The Federal Act concerning town and country planning (LAT) of 22 June 1979, supplemented by an order dated 2 October 1989, defines the principles relating to the two essential features of town and country planning: land zoning and coordination of development.

488. The land-zoning system is designed, through the planning process, to distinguish land for building from land not to be used for building. The first planning instrument is the *master plan* that the cantons are required to produce for their territory (arts. 6 to 12 LAT). These plans are subject to approval by the Federal Council and their content is partially governed by federal law. They are binding on the authorities (art. 9 LAT). The second

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[109] Rejected by a small majority of the people and by 12 cantons and 4 demi-cantons.

[110] Canton of Solothurn (art. 22 (e)); canton of Basel-Country (section 17 (d)); canton of Bern (art. 29, paragraph 1).

instrument is the *zoning plan* (arts. 14 to 20 LAT), essentially governed by cantonal law and drawn up largely by the communes. The purpose of this latter plan is to designate the way in which land is to be used, with zones being demarcated for building, for agriculture or as protected areas. The cantons may also envisage other designated zones within the building zone (residential; industrial and handicraft; mixed zones). The zoning plans are the backbone of town and country planning and have binding force on all parties (art. 21 LAT). No building licence may be issued unless building complies with the zoning established for the area and unless the land is properly serviced (art. 22 LAT).

489. The plans have the status of legal norms. The Act concerning town and country planning envisages that at least one line of recourse against the zoning plans is to be provided at the cantonal level. The cantonal ruling of last instance may be the subject of public-law appeal before the Federal Tribunal. Rulings regarding building permits fall within administrative jurisdiction, and decisions taken in their regard by the cantonal authorities of last instance may be challenged by public law appeal before the Federal Tribunal. If these decisions concern buildings or installations located outside the building zones, the rulings issued by the cantonal authorities of last instance may be the subject of an administrative appeal before the Federal Tribunal.

490. Article 4 LAT lays down that the authorities (Confederation, cantons and communes) must inform the public of the different plans and ensure public involvement in the planning process. At the cantonal level, the ways in which the public is informed and invited to participate vary considerably, both in terms of timing and the approach used. At the federal level, a survey carried out by the Federal Town and Country Planning Office put forward a number of recommendations for implementation of this article by the Confederation.[111]

(b) Expropriation

491. The right to property is guaranteed by article 22 *ter* of the Constitution, which gives the Confederation and the cantons the possibility of carrying out expropriation measures. The Confederation may also have recourse to expropriation if it is undertaking public works (art. 23 of the Constitution). In the event of expropriation and restrictions on property equivalent to expropriation, fair compensation is payable (art. 22 *ter*, para. 3; art. 23, para. 2 of the Constitution). This situation is reflected in the Town and Country Planning Act (art. 5, para. 2, LAT).

492. The guaranteed right to property means that expropriation is admissible only under certain conditions: it must have a legal basis, it must respect the principle of proportionality and it must be justified by a preponderant public interest. At the federal level, the legal basis is constituted, firstly, by the 1930 Federal Act concerning expropriations and, secondly, by the special federal laws authorizing expropriation for specific purposes.

493. The Constitution lays down that compensation must be paid not only for formal expropriations, but also for material expropriations, i.e. restrictions on property that are equivalent to expropriation. In the case of formal expropriation, compensation is a condition of the transfer of the right, whereas in material expropriation compensation is payable only under certain conditions. These are determined by the abundant precedents set by rulings of the Federal Tribunal, relating essentially to environmental protection and town and country planning. Compensation is also payable when one or more owners make a heavy sacrifice for the community and it would run counter to the principle of equality of treatment were compensation not paid. Furthermore,

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[111] W. Linder, B. Lanfranchi, D. Schnyder, A. Vatter, *Procédures et modèles de participation; Propositions pour une politique de participation de la Confédération selon l'art. 4 LAT* (Procedures and models for participation; proposals for a Confederation participation policy in compliance with art. 4 LAT), Federal Department of Justice and Police Affairs, Federal Town and Country Planning Office, Bern 1992.

compensation is also payable if public works give rise to excessive nuisance which could not be foreseen for the landowner, particularly affect him and cause serious damage. The Town and Country Planning Act also envisages the payment of "fair" compensation if a planning measure jeopardizes property rights without the conditions necessary for material expropriation being fulfilled (art. 5, para. 1, LAT).

(c) Protection of tenants

494. Tenants are protected against unfair leases and wrongful notice to quit and they enjoy protection when extending their lease.

495. Article 34 *septies* of the Federal Constitution lays down that the Confederation may legislate against unfair leases.[112] In pursuance of a federal Decree of 30 June 1972 establishing measures against abuses in the rental sector, the Federal Council established a system for monitoring rents. The Decree was extended several times and remained effective until June 1990, when it was replaced by private-law provisions embodied in the Code of Obligations (CO).

496. The system established in articles 69 to 270 of the Code of Obligations is a rent-monitoring system. The calculation of the rent is therefore left to the parties as a matter of their freedom of contract. A tenant may, however, approach a cantonal conciliation commission to contest an unfair lease; he may contest the initial amount of the rent (art. 270 CO), or an increase in rent (art. 270b CO), or else obtain a reduction in the rent (art. 270a CO).

497. The Code of Obligations essentially uses two criteria to define an unfair rent: the first criterion is comparative in that a rent is deemed to be fair if it is within the limits of normal rents for a particular locality or district (art. 269a CO); the second is based on a cost calculation, the rent being deemed to be fair if it gives the lessor a normal return on his investment, on the basis of a purchase price that is not manifestly exaggerated (art. 269 and art. 269a, letters b to e, CO).

498. A tenant may also contest notice to quit, since the Code of Obligations embodies criteria whereby notice to quit may be annulled. Notice to quit "may be annulled if it contravenes the rules of good faith" (art. 271 CO). Article 271a CO, which sets out examples of unfair notice to quit, provides in particular that notice to quit may be annulled if it is given by the lessor "for the purpose of imposing a unilateral change in the lease that is unfavourable to the tenant or to change the rent" (art. 271a, letter b). Notice to quit that is designed to oblige the tenant to purchase the dwelling may also be annulled. Paragraph 3 of article 271a excludes from this list cases in which the interest of the lessor is preponderant.

499. The tenant may ask for the lease to be extended if its termination would have unfavourable consequences for him and at the same time is not justified by the interests of the lessor (art. 272 CO). The lessor's need to use the premises himself constitutes only one of a number of factors, that the judge has to take into consideration in examining the interests involved in the case. It is thus an essential factor, but no longer decisive. The length of the extension is four years for a residential lease and six years in respect of business premises.

500. In accordance with the civil-law procedure, the implementation of this regulation is left to each canton. The cantons are responsible for setting up conciliation authorities, entities composed on a basis of parity which

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[112] This new formulation was accepted by popular vote in 1986 as a replacement for the initial 1972 article, which laid down that "the Confederation shall legislate to protect tenants against unfair rents and other requirements imposed by landlords. The measures shall apply only in the communes where there is a shortage of dwellings and against business premises".

are competent to deal with all lease-related matters. They are also competent to rule in cases of protection against notice to quit, lease extension and deposit, acting as the judicial authority for such cases. The procedure must be free of charge and also "straightforward and rapid" (art. 274d CO). Under criminal law, failure to comply with the legal requirements regarding the protection of tenants is punishable by a short period of imprisonment or a fine (art. 325 *bis* CP), if the tenant lodges a complaint.

501. Furthermore, on 23 June 1995 Parliament adopted the new Federal Act regarding framework contracts for rental lease agreements and their compulsory application. Both the Act and its implementing regulations entered into effect on 1 March 1996. This Act fulfilled the constitutional mandate, introduced in 1972, of regulating the compulsory nature of framework contracts for rental lease agreements. Under certain conditions, the Federal Council may authorize the parties to depart from the mandatory provisions of the Code of Obligations governing lease law. The possibility of declaring the compulsory force of framework lease contracts is designed to promote a spirit of cooperation and a fair balance of interests in dealings relating to leases, to prevent disputes between lessors and tenants and to find a solution that takes account of the market situation.

(d) Assistance to tenants

502. One of the objectives of the 1974 Federal Act concerning promotion of residential construction and home ownership is to introduce measures to lower rents. The assistance provided by the Confederation is objective rather than subjective in that it is not paid directly to the tenant, but granted to persons placing rental accommodation on the market, in order to encourage the building of low-rent dwellings. The system for lowering rents is based on two mechanisms: the basic reduction and supplementary reductions I and II.

503. The basic reduction takes the form of a reimbursable advance paid by the Confederation which is designed to bring the initial rent down to a level below the amount needed to cover the owner's expenditure. A system of phased rent increases (3 per cent per annum) then operates to bring the rent, after 10 years, up to the gross level necessary to cover costs and then to generate a surplus enabling the State advance to be reimbursed. The owner of rental accommodation which has qualified for a basic advance may let such dwellings to any takers.

504. The basic reduction is augmented by the supplementary reductions I and II, which are not reimbursable. These non-refundable contributions are paid to low-income individuals of modest means. Supplementary reduction I is set at 0.6 per cent of the cost price and is payable for a period of 11 years. It is designed to assist families and single individuals to live in dwellings of up to three rooms. Supplementary reduction II corresponds to 1.2 per cent of the cost price and is payable for 25 years. It is designed to assist disabled or elderly persons, or individuals who require care or who are following training courses, to live in dwellings of up to three rooms.

505. Between 1 January 1975 and 31 December 1995, the Confederation, pursuant to the Federal Act concerning promotion of residential construction and home ownership, granted assistance for the building, purchase or renovation of some 91,000 buildings, 32 per cent of which being for home ownership. Since 1975, the Confederation has stood surety for approximately 5.2 billion francs and granted loans amounting to about 2.9 billion francs. In the same period, the Confederation provided assistance totalling some 1.7 billion Swiss francs for supplementary reductions.

506. Mention should also be made of another law, namely the Federal Act concerning the improvement of housing in mountain regions (LALM). This Act protects disadvantaged tenants and owners in Switzerland's mountain regions. It covers individuals and families of modest means and is designed to prevent depopulation of the mountains through the improvement or building of new dwellings. Federal assistance is provided only if the canton also provides assistance. The latter varies, depending on the financial capacity of the canton concerned, between 10 and 45 per cent of the costs.

507. Between 1 January 1971 (the date on which it came into force) and 31 December 1995, the amount of federal assistance granted under the LALM amounted to 387.2 million Swiss francs for some 21,000 dwellings.

(e) Home ownership

508. Article 34 *sexies* of the Federal Constitution, introduced in 1972, empowers the Confederation to take steps "to encourage the building of dwellings, particularly by reducing their cost, and ownership of an apartment or house". The 1974 Federal Act concerning promotion of residential construction and home ownership (LCAP) provides for assistance for the building, purchase and renovation of apartments and family houses. To this end, the Confederation uses the same mechanisms as in the case of rent reduction, namely the furnishing of security, basic reductions and supplementary reductions I and II.

509. A new Act concerning promotion of home ownership by means of occupational insurance, dated 17 December 1993, came into force on 1 January 1995. According to this Act, funds generated by occupational old-age, survivors' and disability insurance (second pillar; see art. 9 above) may be made available to the insured person, provided that he uses such funds to purchase a home or to pay off a mortgage on a home which is used by the person concerned or his family, provided that it is his principal residence.

510. The insured person may be eligible for various benefits: advance payment of an amount corresponding to his current free transfer benefit; pledging of entitlement to provident benefits; pledging of an amount equal to his free transfer benefit. These options may also be used to acquire shares in a construction and residential cooperative or similar forms of participation, provided that the dwelling is for personal use.

511. The amount that is deducted reduces proportionately the insured person's provident entitlements, but a minimum level is guaranteed. Employees under the age of 50 who have occupational insurance coverage may use all their acquired free transfer benefit. Persons over 50 years of age may use no more than the free passage benefit acquired at the age of 50 years or half of the free transfer benefit to which they are entitled on the date of application. The insured person may make reimbursement at any time, up to three years prior to commencement of entitlement to old-age benefits or until such time as a contingency covered by the provident insurance occurs.

(f) Improvement of dwellings in rural areas

512. The 1962 Federal Act concerning investment credits in agriculture (LCI), gives the Confederation the possibility of granting interest-free loans to farmers, primarily to build or to convert their homes. On average, the loans are repayable within a 16-year period.

513. During the last 10 years, loans totalling 37.8 billion Swiss francs have been granted pursuant to this Act for the building or conversion of 500 dwellings.

(g) Construction

514. In Switzerland, legislation concerning construction and the supervision of construction sites is within the competence of the cantons. Construction is thus regulated by 26 cantonal laws which are each distinctive to some extent. In addition, the 3,000 or so communes in Switzerland have laid down conditions for the supervision of construction work. Buildings constructed by the Confederation must comply with the standards set by the cantons and the communes. The only exceptions are construction works for national defence or the federal railways.

515. The Federal Department of Public Finance (DFEP) has issued a new order relating to the cost of constructing new dwellings which qualify for federal assistance. This replaces the order of the same title issued on 17 December 1986. This order establishes the limits of the construction costs for dwellings for disabled and elderly persons where such swellings are built in accordance with the Act for promotion of residential construction and home ownership. A further DFEP order dated 12 May 1989, sets minimum conditions—again for dwellings built with federal assistance—regarding net living space, the number and size of the rooms, the equipping of kitchens, toilets and sanitary installations.

XII. ARTICLE 12: THE RIGHT TO HEALTH

A. Principal instruments applicable

516. The following are the principal instruments applicable:

(a) National instruments:

(i) Communicable diseases:

Federal Constitution, article 69;

Loi fédérale sur la lutte contre les maladies transmissibles de l'homme (Loi sur les épidémies) (Federal Act concerning the control of human communicable diseases) (Epidemics Act), dated 18 December 1970;

Ordonnance sur les vaccinations gratuites (Order on free vaccination), dated 22 December 1976;

Ordonnance concernant la déclaration des maladies transmissibles de l'homme (Ordonnance sur la déclaration) (Order concerning the reporting of communicable human diseases) (Reporting Order), dated 21 September 1987;

(ii) AIDS:

Ordonnance instituant des mesures propres à empêcher la transmission par le sang et les produits sanguins de maladies infectieuses dangereuses (Order establishing measures to prevent the transmission of dangerous infectious diseases through blood and blood products), dated 9 April 1986;

Arrêté fédéral sur l'octroi de prestations financières aux hémophiles et aux receveurs de transfusions sanguines infectés par le VIH et à leurs conjoints infectés (Federal Decree on the granting of financial benefits to haemophiliacs and recipients of HIV-infected blood transfusions and to their infected partners), dated 14 December 1990;

Ordonnance sur l'octroi par la Confédération de prestations financières aux hémophiles et aux receveurs de transfusions sanguines infectés par le VIH et à leurs conjoints infectés (Order on the granting by the Confederation of financial benefits to haemophiliacs and recipients of HIV-infected blood transfusions and to their infected partners), dated 10 April 1991;

(iii) Illegal drugs:

Loi fédérale sur les stupéfiants (Federal Act concerning narcotic drugs), dated 3 October 1951;

(iv) Environment:

Federal Constitution, article 24 *novies*;

Loi fédérale sur la protection de l'environnement (LPE) (Federal Act concerning environmental protection), dated 7 October 1983;

Loi fédérale sur la protection des eaux (Federal Act concerning protection of waters), dated 24 January 1991;

Loi fédérale sur les toxiques (Federal Act concerning toxic substances), dated 21 March 1969;

Loi fédérale sur la radioprotection (Federal Act concerning radiological protection), dated 22 March 1991;

Ordonnance sur la protection de l'air (Order on the protection of air quality), dated 16 December 1985;

Ordonnance sur la protection contre le bruit (Order on noise protection), dated 15 December 1986;

Ordonnance sur le traitement des déchets (Order on the treatment of wastes), dated 10 December 1990;

(v) Occupational health:

Loi fédérale sur le travail dans l'industrie, l'artisanat et le commerce (Loi sur le travail (LTr)) (Federal Act concerning work in industry, handicrafts and commerce (Labour Act)), dated 13 March 1964;

Loi fédérale sur l'assurance-accidents (LAA) (Federal Act concerning accident insurance), dated 20 March 1981;

Ordonnance sur la prévention des accidents et des maladies professionnels (OPA) (Order on accident prevention and occupational diseases), dated 19 December 1983;

Ordonnance 3 relative à la loi sur le travail (Hygiène, OLT3) (Order No. 3 concerning the Labour Act) (Hygiene), dated 18 August 1993;

(vi) Financing of health services:

Loi fédérale sur l'assurance-maladie (Federal Act concerning sickness insurance), dated 13 June 1911;

(vii) Medical drugs:

Loi fédérale sur la pharmacopée (Federal Act concerning the pharmacopoeia), dated 6 October 1990;

Convention intercantonale sur le contrôle des médicaments (Inter-cantonal Convention on the control of medicines), dated 3 June 1971;

Ordonnance concernant les produits immunobiologiques (Order concerning immunobiological products), dated 23 August 1989;

(viii) Miscellaneous:

Loi fédérale sur les denrées alimentaires et les objets usuels (Federal Act concerning foodstuffs and staple items), dated 9 October 1992.

B. General

517. In Switzerland health is primarily the responsibility of the cantons, particularly as regards health-care supply. In this area, the 26 cantons are largely independent. The Confederation is responsible for certain functions in the following areas: communicable diseases, narcotic drugs, tobacco and alcohol addiction, foodstuffs, chemical products, radiation protection, the pharmacopoeia and immunobiological substances, examinations in connection with medical studies, sickness and accident insurance, occupational safety and environmental protection.

518. There is no federal ministry of health. In Switzerland health care is strongly influenced by the federal nature of the State. Consequently, there is no national agency responsible for the entire system. Nationally, a number of offices are responsible for the tasks of a federal nature. Most of these offices report to the Federal Department of the Interior, in particular the Federal Office of Public Health, the Federal Office of Social Insurance and the Office for the Environment, Forests and the Countryside. At the cantonal level, responsibility for health matters is divided equally among one or more departments. Inter-cantonal coordination is provided by an institution established by the cantons—the Conference of Cantonal Health Directors.

519. In this federalist context, it is no easy matter to formulate a nationwide health policy. In order to improve and intensify coordination with regard to health promotion among the different partners involved (Confederation, cantons and private organizations), these partners established the Swiss Health Promotion Foundation in 1989. The Foundation has prepared a programme of action for 1993 to 1997, which is supported, *inter alia*, by the Confederation, the cantons and the insurance institutions (sickness and accident). The aim of this programme of action is to interlink and to support health promotion efforts throughout Switzerland. To this end, national priorities have been established and arrangements developed to promote collaboration and coordination.

520. A report on health in Switzerland was published for the first time in 1993.[113] The Federal Statistical Office is currently examining the results of the first Swiss health survey, conducted in 1992/1993.

521. Switzerland has been an active member of the World Health Organization (WHO) since 1948 and is particularly involved in the "Health for all by the year 2000" strategy. Switzerland's second report to evaluate compliance with the 38 targets fixed for the European strategy was submitted to WHO in September 1994.

C. General state of health of the public

522. The public's own subjective assessment of its health is a reliable and recognized indicator of its general state of health. According to the health survey conducted by the Federal Statistical Office, over eight in ten people (85 per cent) consider themselves to be in good or very good health and almost 90 per cent of those questioned say that their lifestyle is influenced by a desire to stay healthy.[114]

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[113] *Health in Switzerland*, published under the direction of Walter Weiss, Federal Office of Public Health, Editions Payot, Lausanne, 1993.

[114] Survey of 23,000 private households throughout Switzerland.

1. Mortality and morbidity

523. The mortality rate has declined dramatically over the past century and was 685 deaths per 100,000 persons in 1993 (870.9 for men and 498.6 for women). The reduction is clearly more marked in the case of women.

524. Cardiovascular diseases are the main cause of mortality (40.2 per cent of all male deaths and 47.8 per cent of all female deaths in 1990) followed by malignant tumours (both men and women). Accidents and other traumas occupy third place.

525. The cardiovascular mortality rate has dropped in the past 20 years, particularly as regards cerebrovascular diseases. The number of deaths from cancer has decreased appreciably among men under the age of 65 years owing to a reduction in the number of lung cancers and a favourable trend in the stomach cancer rate. The number of deaths from cancer among women has also decreased, particularly with regard to breast cancer. Thirty per cent of cancer deaths are caused by smoking, 35 per cent by malnutrition, 5 to 10 per cent by alcohol consumption and 2 per cent by environmental pollution.

2. Behaviour and lifestyle

526. Thirty per cent of the Swiss population smoke, while 49 per cent of the population have never smoked and 21 per cent have given up smoking. More men than women smoke (37 per cent as against 23 per cent) and individuals between the ages of 25 and 34 years smoke most (43 per cent of men and 34 per cent of women). The number of male smokers has declined steadily since the 1980s, whereas the proportion of women smokers has remained stable.

527. A little over half the population (53 per cent) drink alcohol at most twice a week, 31 per cent more than twice a week and 16 per cent not at all. Women drink alcohol far less frequently than men. The French-speaking cantons and Ticino have a higher proportion of daily alcohol drinkers (29 per cent and 34 per cent, compared with 17 per cent in German-speaking Switzerland).

528. About 3 per cent of the population engage in daily use of medicines that may cause dependence, such as sleeping tablets or tranquillizers. Women take twice as many such medicines as men and consumption increases with age.

529. Fifteen per cent of young people between the ages of 15 and 39 years have already tried drugs such as hashish, heroin, cocaine, amphetamines, hallucinogenics or morphine. Four per cent of the people in this age group currently use such drugs, i.e. 117,000 young people (82,000 men and 35,000 women). Most narcotics users are not dependent.

530. On the basis of the Body Mass Index, 70 per cent of the population are normal weight, 25 per cent overweight and 5 per cent obese. The proportion of persons of normal weight is largest (93 per cent) among women between the ages of 15 and 24 years and lowest (41 per cent) among men between the ages of 55 and 64 years.

Table 21. Mortality rate by main cause of death, in 1993

Mortality rate (per 100,000 persons)	Men	Women
All causes of death	870.9	498.6
Infectious diseases	18.9	8.3
AIDS	11.4	3.5
Tuberculosis	0.9	0.4
Cancer, all forms	257.7	146.4
Cardiovascular diseases	339.5	202.9
Respiratory diseases, all forms	67.6	31.7
Diabetes	14.2	12.8
Cirrhosis	10.9	4.2
Accidents, all kinds	47.7	21.1
Accidents involving motor vehicles	14.6	4.2
Suicide	28.3	10.3

Source: Federal Statistical Office.

D. Statistical indicators

531. ***Infant mortality.*** The rate of infant mortality in Switzerland has decreased very markedly since the beginning of the century. The figure has slightly risen again in recent years because of the increase in the number of multiple births, which are also associated with a large number of premature births, giving rise to a greater mortality risk. The mortality rate in 1993 was 5.6 per 1,000 live births.

Table 22. Infant mortality rate (per 1,000)

1980			1985			1990		
Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
10.4	7.7	9.1	7.7	6.0	6.9	7.1	5.3	6.2

Source: Federal Statistical Office.

532. ***Access to clean water and hygiene.*** Each year the population consumes 1.2 billion litres of drinking water, predominantly from groundwater sources (80 per cent). The remaining 20 per cent is taken from the lakes. In Switzerland, the hygiene level of drinking water supply is very high. Currently, close to 100 per cent of the population are provided with good-quality drinking water. Connection to the sewage system is compulsory and 99 per cent of buildings are connected, the only exceptions being isolated rural dwellings. As far as waste-water processing is concerned, the dwellings of 92 per cent of the population are connected to sewage treatment stations and this figure is to increase to 96 per cent.

533. ***Vaccination of infants.*** For Switzerland as a whole, 93 to 95 per cent of infants aged between 27 and 36 months have been vaccinated at least three times against diphtheria, tetanus and poliomyelitis. Between 80 and 83 per cent of children were vaccinated against measles, mumps and German measles during an inoculation

campaign in 1987. The vaccination level is lower in certain regions (French-speaking Switzerland) and among certain groups (immigrant children).

534. ***Life expectancy.*** Life expectancy at birth continues to increase: between 1980 and 1982 it rose from 72.3 to 74.3 years for men and from 78.8 to 81.2 years for women. The increase is due above all to improved life expectancy at age 65. In 1990, life expectancy at age 65 was 15.3 years for men and 19.7 years for women.

535. Life expectancy without disability was 65.9 years for men and 69.7 years for women (1981), representing an average of 90 per cent of total life expectancy. For the population as a whole, the average duration of diseases and handicaps of such a nature as to prevent a normal, independent life is between 7 and 9 years.

536. ***Accessibility of care.*** The large number of physicians and hospitals, in relation to the population, the small size of the country and the quality of the transport system guarantees very good accessibility to the health system services and care centres. This means that the travel time for more than 95 per cent of the population to a physician's surgery is less than 30 minutes or the distance is less than 15 kilometres; for 19 per cent, the figure is less than 19 minutes.

537. ***Maternal mortality.*** Taking all causes together, maternal mortality dropped from 5.4 to 3.7 per 100,000 births between 1980 and 1989. However, this figure fluctuates from one year to the next since it is based on the number of live births. Maternal mortality increases with age and is higher among women in rural areas.

538. There are no figures on prenatal care but, according to a report published in 1985, the number of perinatal check-ups per pregnancy is five. Ninety-nine per cent of births occur in a hospital or clinic.

539. ***Health expenditure.*** In 1992, expenditure on health amounted to approximately 31.7 billion francs. Such expenditure has increased by 61 per cent since 1981. Half of this expenditure (50 per cent) is for in-patient care (in hospitals, nursing homes and institutions for the disabled) and 32 per cent for out-patient treatment (physicians, pharmacies and others). The administrative costs of social insurance and State insurance amount to 5.1 per cent of expenditure, whereas only 2 per cent of the total expenditure goes to preventive medicine.

540. Half of the costs are paid by the social insurance institutions and 28 per cent directly by households. In fact, however, private households bear 62 per cent of the costs and the sickness insurance premiums represent the largest single item in their contributions. The public authorities (Confederation, cantons and communes) bear more than a quarter of the expenditure (28 per cent).

Table 23. Health expenditure as a percentage of GDP

1960	1975	1985	1990	1991	1992
3.3	7.0	7.6	7.8	9.0	9.3

Source: Federal Statistical Office.

E. Inequalities in health care

541. Although there are no disadvantaged groups as regards health care in Switzerland, it is undeniable that inequalities exist in health-care provision between different groups in society, by sex, place of residence, activity and vocational qualifications or level of education.

542. The inequality between men and women with regard to life expectancy is striking: on average, women live seven years longer than men. This situation is particularly due to the above-average mortality of young men as a result of suicide or accidents and, among men in general, to industrial accidents.

543. The mortality differences between the cantons, above all with regard to cancers and tumours linked to tobacco and alcohol consumption, reflect differences in behaviour and lifestyle.

544. There are also inequalities in the different socio-professional categories. For instance, male mortality is far below average among senior and middle management and the self-employed. However, it is far above average among skilled workers and, in particular, in the manual occupations. The risk of industrial accidents is particularly high among men working in forestry, construction, the timber industry and the food sector. In these branches of activity, the risk of an occupational disease affecting the locomotor system is far higher than average. The same applies to women working in the food, leather, plastics and timber industries, the paper and graphic arts sectors, chemicals and commerce. Staff trained on the job are particularly subject to occupational diseases.

545. Level of education is an important inequality factor. There is a positive correlation between health and educational levels: the more advanced the individual's education, the more his or her behaviour will foster health (lower consumption of alcohol or tobacco, sport, etc.) because of greater awareness and knowledge of what is harmful to health and the higher capacity for solving problems and understanding what must be done to preserve or improve mental and physical well-being.

F. Infant mortality and child development

1. Children's health

546. As can be seen from the indicators mentioned above, the infant mortality rate in Switzerland is very low. Most deaths occur during the first week or even during the first 24 hours of life and are due, primarily, to perinatal conditions. Congenital anomalies are the main cause of death during both the first month and the first year of the child's life. Cot death syndrome, which has yet to be explained, is the most frequent cause of infant mortality.

547. The mortality rate among children aged between 1 and 14 years is far lower than during the first year and is one of the lowest in Europe. Traumas are the main cause of death, whether as a result of accidents at home (particularly in the 1-4 age group) or traffic accidents (4-14).

548. Maltreatment within the family is one of the main factors hindering normal child development. A report published in 1992 by the Working Group on Child Abuse of the Federal Department of the Interior revealed the scale of the problem.[115] Maltreatment, mainly in the form of physical or sexual violence, frequently accompanied by neglect, is very widespread. Each year between 40,000 and 50,000 children are believed to be victims of sexual abuse. The major difficulty in dealing with this problem is the detection of maltreatment, particularly among very young children below school age. The report puts forward a whole range of practical recommendations for the federal and cantonal authorities and the various professionals involved.

549. Several awareness campaigns have been launched on child abuse and sexual abuse, particularly by staging plays or travelling exhibitions. Several cantons have set up emergency telephone lines for children, which

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[115] *L'enfance maltraitée en Suisse* (Child abuse in Switzerland), Final report by the Working Group on Child Abuse, submitted to the Head of the Federal Department of the Interior, Bern, 1992.

operate around the clock. The city of Lucerne has established the first post of Children's Ombudsman in Switzerland.

2. Health of adolescents

550. Although the mortality rate among children has declined markedly, there has been only a slight decrease in the mortality rate among adolescents aged between 15 and 19 years. In this age range, violent death accounts for about three deaths out of four: road traffic accidents or accidents during leisure activities are the main cause of death, followed by suicide. Switzerland has the highest rate of suicide among young people in Europe, although the rate has dropped considerably since 1980. The suicide rate is four times as high among boys as among girls.

551. Adolescence is sometimes also characterized by a whole range of psycho-social problems which are reflected in depression, bulimia or anorexia and are connected with specific problems relating to that stage of life (biological changes, increasing independence from parents, future aspirations).

Table 24. Suicide rate among young people aged between 15 and 19 in 1982 and 1988 (per 1,000)

	1982	1988
Male	25.4	15.9
Female	8.0	4.1

552. A survey published in May 1995 examines behaviour among schoolchildren aged between 11 and 16 that is prejudicial to health.[116] The data collected in 1994 are compared with those for 1986. The study shows that the proportion of young people who had never drunk alcohol remained stable at 35 per cent. The number of young people who consumed alcohol daily increased from 0.2 per cent in 1986 to 2 per cent in 1994. This increase was essentially due to increased consumption by girls, whose behaviour tended to resemble that of boys. The number of adolescents who admitted to having been drunk once in the two months preceding the survey increased considerably. The proportion admitting to two instances of drunkenness doubled, as compared with 1978, while the figure for those with four to five experiences of drunkenness trebled; above that level, the figure quadrupled. Fifty-six per cent of young people claimed they had never smoked but, although the figure was 95 per cent for children aged 11 years, it was only 65 per cent among 16-year-olds. The number of schoolchildren who smoked daily increased from 4 per cent in 1986 to 11 per cent in 1994 and one fourth of 16-year-olds admitted that they smoked regularly. The same pattern applied to the use of hashish: 18.4 per cent of young people between 14 and 16, as against 11 per cent in 1986, said that they had used cannabis at least once. The use of hard drugs such as heroin or cocaine was found among only 0.8 per cent of young persons.

553. In order to prevent such harmful behaviour, some cantons have established "school multiplier" programmes. Based on the observation that young people are greatly influenced by their peers, these programmes set out to impart information to two pupils in each class, at a camp lasting a few days, so that they will then be able to pass on information to their classmates in a knock-on process. This approach has been tried in the cantons of Basel and in the city of Bern, with good results.

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[116] *Alkohol-, Tabak- und Drogenkonsum bei 11- bis 16-jährigen Schülern und Schülerinnen in der Schweiz* (Alcohol, tobacco and drug consumption among male and female pupils between the ages of 11 and 16 in Switzerland); Swiss Institute for the Prevention of Alcoholism and other Drug Addictions, Lausanne, May 1995.

554. The health of adolescents is one of the three priority topics of the 1993-1997 action programme produced by the Swiss Health Foundation, in collaboration with other agencies. This programme uses a range of preventive measures that are designed to establish awareness of the risk connected with certain forms of behaviour and to establish specific advisory and consultation channels for adolescents.

G. Environmental health and health at work

1. Environment

555. Environmental protection has been enshrined in the Constitution since 1971. The Confederation has undertaken to "legislate on the protection of man and the natural environment against any harmful or untoward influences" (article 24 *septies* of the Constitution). The main implementing Act is the Environmental Protection Act (LPE) of 7 October 1983. This Act is currently being revised and the relevant communication was adopted by the Federal Council in 1993. The LPE is supplemented by numerous Orders that regulate in detail certain specific aspects of environmental protection. In general, the cantons are competent to implement this Act and the relevant Orders.

556. Four basic principles underlie all legislation on environmental protection:

(a) The principle of prevention;

(b) The causality ("Polluter pays") principle;

(c) The principle of collaboration;

(d) The principle of comprehensive assessment of environmental damage.

557. Pursuant to the LPE, the authorities are required to inform the population regularly and comprehensively on the state of the environment. The various data and figures are published regularly and, in 1993, the Federal Office for the Environment, Forests and the Countryside published a second comprehensive report on the state of the environment in Switzerland.

(a) Air

558. Air pollution can have acute or chronic effects on human health. With protection in mind, the Confederation adopted the Order on the protection of air quality of 16 December 1985, with the primary aim of reducing air pollution by cutting out emissions at source. Steps have been taken to reduce vehicular pollution, for instance, by exhaust gases regulation (compulsory catalytic converter) or the 80 and 120 km/h speed limits on roads and motorways, respectively.

559. The Order also fixes emission limit values for most harmful substances. In accordance with the Environmental Protection Act, these values have been defined on the basis of criteria such as health protection, particularly the health of children, pregnant women and the elderly.

560. Air pollution is continuously monitored. The national atmospheric pollutants observation network currently consists of 16 measurement stations throughout the country. The emission data are published in monthly and annual reports; since 1992, they have been published daily on Teletext. The emission measurements indicate an improvement, since 1992, in air quality as regards emissions of sulphur dioxide and carbon monoxide as well as the heavy metal content. However, the nitrogen dioxide concentrations in urban areas and

along the roads greatly exceed the acceptable limit values for the health of humans, animals and plants. Similarly, the ozone concentration is particularly high in rural areas and also exceeds the limit values, particularly during the summer smog periods.

(b) Water

561. The Federal Water Protection Act was revised in 1992 and now provides for complete protection of water courses, lakes, rivers, groundwater and springs. This Act, which is also designed to protect human health, guarantees an adequate supply of drinking water.

562. The traditional organic pollution of water has been reduced in recent decades, leading to an appreciable improvement in the state of water courses. The protection of groundwater, which accounts for 80 per cent of the drinking water supply, has made it possible to distribute good-quality water. About half of this water is therefore sent into the distribution system without any prior treatment, while the other half requires only simple technical treatment. Groundwater is, however, threatened by a number of pollutants. Intensive soil use (fertilizers and plant protection products used in agriculture) gives rise to a high nitrate level. Chlorides are also a pollutant factor. The monitoring of groundwater is therefore an absolute priority, both in connection with supplying the population with drinking water and for the overall ecological balance. It is planned to establish a network of pollution-measuring stations.

(c) Noise

563. The percentages of the population exposed to noise levels of over 60 decibels are 30 per cent (road noise), 4 per cent (railway noise) and 1 per cent (aircraft noise).

564. The 1986 Order on Noise Protection envisages action at two levels: firstly, the limiting of noise emissions at source and, in a second phase, measures against emissions. The Order fixes limit values for exposure to external noise from the most important sources and sets requirements for sound insulation in buildings and for building zones and building licences.

565. The implementation of this Order has to date focused on measures to combat noise along roads. However, corrective action has fallen behind the targets set in the Order.

(d) Waste

566. In 1992, the Federal Office for the Environment, Forests and the Countryside published a "Strategy for Waste Management in Switzerland", setting forth measures to reduce overall environmental damage. Four strategies have been established to achieve these ends:

(a) Waste prevention at source;

(b) Reduction in pollutants in the production process;

(c) Waste reduction through better utilization techniques;

(d) Pollution reduction through the ecological processing of wastes.

567. This Strategy and the 1990 Order on waste processing have made it possible to maintain a virtually constant level of waste requiring disposal. Each inhabitant produces 419 kg of urban waste annually; 80 per

cent of this waste is burned in the 30 incineration plants in Switzerland, which have flue-gas purification systems, the remaining 20 per cent being dumped in tips.

568. The greatest advances have been made in the area of waste utilization. The introduction of taxes on rubbish sacks in several communes has brought about an appreciable increase in the proportion of recyclable waste. The 1990 Order on packaging for beverages has also contributed to this. Thus, the recycling of glass rose from 54 per cent in 1990 to over 72 per cent in 1993; the return of aluminium cans increased to 60 per cent and that of polyethylene bottles to 53 per cent. Paper recycling amounts to 50 per cent of consumption. The selective waste collection system has also made it possible to increase composting of vegetable wastes, which has risen by 54 per cent (from 230,000 to 350,000 tons).

569. The processing of special waste is governed by the Order on the movement of special waste that has been in force since 1987. In 1991, Switzerland produced a total of 740,000 tons of special wastes. Part of this waste (about 126,000 tons) is exported and the remainder is processed or stored in Switzerland. The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal entered into force for Switzerland in 1992.

2. Health and hygiene at work

570. Reference is made to article 7 of this report for detailed information on regulations governing health, hygiene and safety at work.

571. In Switzerland, nearly 5,000 cases of occupational disease are recorded annually, and one worker in seven suffers an industrial accident, in 50 per cent of which cases the individual is incapable of work for more than three days. Psycho-social problems are also an increasing factor (monotony, overwork and stress, task complexity, etc.). A survey conducted by OFIAMT showed that 12 per cent of working women and 14 per cent of working men felt that their work was injurious to their health.

572. Health and hygiene at work are governed by the Labour Act (arts. 6 to 8 LTr), as supplemented by Order No. 3 on hygiene (art. 2 OLT3), which lays down that the employer is required to take all necessary measures to ensure and enhance the protection of the health and to guarantee the physical and mental health of workers (art. 2 OLT3). The Order fixes detailed requirements with reference to health and hygiene, particularly in the following areas: buildings, lighting, ventilation, noise, individual protective equipment, changing rooms, showers and washrooms, etc. OLT4 (construction and the equipment of enterprises that are subject to the planning approval procedure) is also a legal source applicable to health and hygiene at work. A number of monitoring agencies are responsible for verifying compliance with these requirements: the cantonal labour inspectorates, the four federal labour inspectorates and the OFIAMT occupational medicine service.

573. Safety at work is governed by the Accident Insurance Act (LAA) and by the Order on accident prevention (OPA), which lays down precise safety requirements, particularly as regards buildings, technical installations and appliances, the working environment and the organization of work. Several executing agencies monitor compliance with the requirements regarding safety at work. The Swiss National Accident Insurance Fund (CNA) is the main monitoring body and its sphere of competence covers the prevention of industrial accidents in certain enterprises and the prevention of occupational diseases in all enterprises. The executing agencies for the Labour Act (OFIAMT and the 26 cantons) also have supplementary monitoring responsibility in the area of safety at work.

574. With reference to occupational medicine, only 15 per cent of the working population currently undergo medical checkups within their enterprises, and some 80 to 100 physicians are employed in the corporate context,

mainly in the large public-sector enterprises and in the chemical industry. Improvements should, however, be made in this area with the amendment of the Order on accident prevention (OPA), which came into effect in July 1993. The new articles 11a to 11g OPA require that the services of occupational physicians and other specialists in the area of safety at work be called upon "when the protection of the health and safety of workers so requires" (art. 11a OPA). This obligation is based on the following main criteria: risk of accidents and occupational diseases and risk analysis, the number of persons employed and specific knowledge required to guarantee safety at work. The Federal Commission on Coordination of Safety at Work (CFST) has produced outline directives on this subject.

575. Many prevention and information campaigns were launched on different subjects in the context of the European Year of Safety, Hygiene and Health Protection at Work (1992/1993). Health at work is also one of the three priority areas of the 1993-1997 programme of action prepared by the Health Promotion Foundation.

H. Epidemic, endemic, occupational and other diseases

1. Epidemic diseases

576. Pursuant to article 69 of the Federal Constitution, the control of communicable, widespread or dangerous diseases is the responsibility of the federal authorities. The main implementing act is the Epidemics Act of 18 December 1970. This Act establishes comprehensive regulations and the cantons are therefore not competent to legislate on this matter. However, implementation is delegated to them under the overall supervision of the Confederation. The cantons are, for example, required to appoint a cantonal physician responsible for adopting the necessary measures to control communicable diseases.

577. The Epidemics Act does not enumerate the diseases to which it applies, but gives a general definition of the notion of a communicable disease. On the basis of article 27 of the Act, the Federal Council has issued an Order on reporting, setting out in detail what diseases are notifiable. Whenever physicians, hospitals or laboratories become aware of such cases, they must notify the cantonal physician thereof.[117] The cantonal physician forwards the information to the Federal Office of Public Health, which may also choose certain physicians or laboratories (watchdogs) to voluntarily notify the Office of important information, for the purposes of an epidemiological census.

578. Cases of tetanus and poliomyelitis are rare in Switzerland. No case of diphtheria has been noted for 10 years. Malaria increased from 1.5 cases per 100,000 inhabitants in 1980 to 5.1 cases in 1989, but has since decreased (3.8 cases in 1992). Information on measles, mumps and German measles has been available only since the beginning of the relevant campaign in 1987. The figures show a reduction in measles and German measles. The incidence of mumps reached its lowest level in 1990 but has considerably increased since then.

[117] Order concerning the reporting of communicable human diseases, dated 21 September 1987.

Table 25. Incidence (per 100,000 inhabitants) of communicable diseases between 1980 and 1992

	1980	1985	1986	1987	1988	1989	1990	1991	1992
Malaria	1.3	3.1	3.0	2.9	4.8	5.1	4.3	4.7	3.8
Measles	-	-	-	98	103	95	124	66	74
Mumps	-	-	-	165	171	79	62	131	213
German measles	-	-	-	112	114	40	34	42	56
Hepatitis A	-	9.4	4.6	4.1	9.7	8.5	13	12	-
Hepatitis B	-	10.8	5.9	3.8	4.8	6.4	5.8	6	-

Source: Federal Statistical Office.

Table 26. New cases of the main infectious diseases[118] in 1992

	Cases	Rate (per 100,000 inhabitants)
Acute gastro-intestinal infections[119]	11,985	174.3
Typhoid and paratyphoid	66	1.0
Hepatitis B	261	3.8
Meningococcal infections	99	1.4
Tuberculosis	987	14.4
AIDS	514	7.5

Source: Federal Statistical Office.

579. The main method for the control of communicable diseases is by vaccination. The Epidemics Act lays down that the cantons should offer free vaccination against the communicable diseases designated by the Federal Council.[120] They can also offer free vaccination against other diseases. They also decide whether such vaccinations should be optional or compulsory. The new Sickness Insurance Act lays down that most vaccinations of very young children must be provided under basic insurance cover. The vaccination level in Switzerland is high (see above).

[118] Cases of the disease notified by the cantons up to and including 31 January 1993.

[119] Including food poisoning in its various forms.

[120] By means of the Order of 22 December 1976, the Federal Council ruled that poliomyelitis and tuberculosis were communicable diseases.

2. AIDS

580. The cumulative number of AIDS cases recorded in Switzerland is one of the highest in Europe, at 713 cases per million inhabitants. Between 1983 and December 1995, the Federal Office of Public Health was notified of 4,996 cases of AIDS; by 1995, 3,670 patients had already died. The number of sufferers has continued to rise and, although the rate of increase has slowed down since 1987, it is still rising steadily. Estimates indicate between 10,000 and 20,000 AIDS HIV-positive individuals.

581. Since 1987, the Federal Office of Public Health and *Aide Suisse Contre le Sida* (Swiss Association Against AIDS) have developed an AIDS control strategy with three objectives:

(a) Prevention of new infections;

(b) Attenuation of the negative consequences of the epidemic;

(c) Promotion of solidarity.

582. In order to achieve these three objectives, measures have been adopted at several levels:

(a) Information aimed at the entire population, disseminated through the Stop AIDS campaign;

(b) Specific motivation of target groups (young people, drug users, etc.);

(c) Personalized prevention and care (consultations).

583. The Stop AIDS campaign is monitored on an ongoing basis by the Lausanne University Institute of Social and Preventive Medicine. This evaluation shows that the campaign has had a very positive impact with reference to protection: whereas only 8 per cent of persons aged 17-30 always used a condom with casual partners, this figure had increased to 56 per cent in 1994. The increase in condom use is, however, less marked among those aged 31-45. In 1992, 47 per cent of people aged between 17 and 45 years had already taken at least one early detection test (including tests of blood donors).

584. Among cases of HIV infection notified by physicians in 1995, 41.2 per cent had been infected heterosexually, 21.8 per cent by the use of contaminated needles when using drugs and 28.3 per cent homosexually or bisexually. Consideration of the pattern over time shows a gradual increase in the number of persons infected heterosexually, a reduction in the proportion infected by intravenous drug injection and stability in the number infected following homosexual or bisexual relationships.

585. There have also been some cases of infection, particularly of haemophiliacs, through transfusions of contaminated blood in Switzerland. The Federal Council estimates that about 100 haemophiliacs, as well as 80 to 100 individuals who received transfusions, may have been infected by the HIV virus.[121]

586. Up to 1986, haemophiliacs were treated with coagulant preparations prepared by the central laboratory of the Central Transfusion Service of the Swiss Red Cross and with preparations from abroad, which might have been contaminated. Monitoring, which was introduced in the summer of 1985, has been systematically carried out since November 1985. Furthermore, an Order of the Federal Council dated 9 April 1986 requires that any person who uses blood or delivers blood to a third party must ensure that there is no trace of HIV in the blood

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[121] *Schweizerische Medizinische Wochenzeitschrift* 1995/125, pp. 1663-72.

in question.[122] Since 1986, Swiss haemophiliacs have been treated only with inactivated-virus coagulant preparations. Up to the end of 1985, haemophiliacs were therefore exposed to a risk of infection. In 1988, the Swiss Haemophiliacs Association submitted a claim for compensation to the Federal Department of the Interior.

587. The Federal Council responded to this claim by means of a Federal Decree of 14 December 1990. While it considered that the authorities had incurred no civil liability, because they could not be accused of wrongful conduct or negligence, it decided, voluntarily, to grant a single payment of Sw F 50,000 to every person infected with contaminated blood, his infected partner, or the family if the individual had died.[123] That amount was increased to Sw F 100,000 by an amendment to the Federal Decree dated 23 June 1995.

588. A group of 10 or so haemophiliacs and persons who had received transfusions of blood infected with the AIDS virus has initiated criminal proceedings against the authorities concerned. A judicial investigation is currently under way.

3. Occupational diseases

589. There were 5,000 cases of occupational diseases in 1992, a reduction of 10 per cent compared with 1988. According to article 9 of the Accident Insurance Act (LAA), diseases deemed to be occupational diseases are those due exclusively or predominantly, in the exercise of an occupational activity, to harmful substances or to certain forms of work. The Federal Council has drawn up a list of such substances and forms of work, as well as a list of work-related diseases. Other diseases may, however, be included in this category if it can be proved that they were caused by the occupational activity (art. 9, para. 2, LAA). According to precedents, it is up to the insurer also to cover the contingency of aggravation of a pre-existing illness, if it was caused by a substance included in the list.

590. The most frequent diseases are those that affect the locomotive apparatus, followed by skin diseases, which represent 70 per cent of all occupational diseases. Diseases of the respiratory tract and deafness due to noise occupy third and fourth places, respectively, followed by occupational cancers, particularly cancer caused by asbestos. It should be noted that Switzerland has ratified ILO Convention No. 162 on asbestos.

591. Health at work is one of the priorities of the National Action Programme developed by the Swiss Health Promotion Foundation.

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[122] Order establishing measures designed to prevent the transmission of dangerous infectious diseases through blood and blood products, dated 9 April 1986. AIDS and Hepatitis B are considered to be dangerous infectious diseases.

[123] Federal Decree on the granting of financial benefits to haemophiliacs and recipients of HIV-infected blood transfusions and to their infected partners, of 14 December 1990. The procedure is governed by an Order of 10 April 1991.

Table 27. Occupational diseases, by sex, with incidence per 10,000 full-time employees, in 1992

	Men	Women
Chronic poisoning	1.54	0.54
Skin diseases	4.19	3.33
Pneumoconioses	0.15	0.02
Occupational cancers	0.12	
Other occupational diseases	10.40	5.97
Total	16.40	9.86

Source: Clearing-house Service for LAA Accident Insurance Statistics.

I. Health services

1. Organization

592. Primary health care is the backbone of the Swiss health system. It is mainly provided by independent general practitioners working in the private sector, who provide 95 per cent of out-patient medical consultations. The State does not intervene to influence the establishment of private medical practices. In addition to these private physicians, it is possible to have out-patient consultation in hospitals, particularly in the general clinics in university hospitals that are accessible to everyone. The non-university hospitals have emergency services and sometimes also provide out-patient treatment, with patients usually being admitted on the instruction of the treating physician. Another option is out-patient treatment for private patients by senior physicians and heads of hospital clinics, who have their own practices in the hospital for this purpose.

593. The majority of hospitals are public-law institutions and receive considerable subsidies from the public authorities. Around one hundred private clinics provide about 10 per cent of available beds. Highly specialized health care is provided by the university hospitals of Zurich, Basel, Bern, Lausanne and Geneva.

594. With the exception of certain sickness insurance institutions that have introduced a health plan system based on the American Health Maintenance Organization (HMO) model, which restricts the choice of physician (except for paediatricians and gynaecologists), patients have freedom to choose their general practitioner, chiropractor or general clinic and may consult either a general practitioner or go direct to a specialist. Access to other treatment or paramedical services covered by social insurance schemes requires a referral from the treating physician. Admission to hospital for treatment also requires referral by the treating physician. Under the minimum legal provisions, a patient may claim reimbursement of the treatment costs in the establishment closest to his place of residence that is able to provide him with the treatment needed for his illness.

595. There is also a home-based care service (SPITEX), which covers all care services enabling persons requiring assistance or care to stay at home. These include community care and home nursing; home care and family aids; domestic help; and meals on wheels. Such assistance is, in the main, provided by private organizations, which are often recognized as public services. The public authorities, mainly the communes, are increasing their financial support for these services.

2. Financing

596. Sickness insurance is optional in Switzerland, but 99.3 per cent of the population are insured with a sickness fund for medical and pharmaceutical costs.[124] Sickness insurance reimburses out-patient and in-patient treatment costs in part, but does not reimburse preventive consultations or care received at home.

597. There are three forms of financing:

(a) Hospital treatment: mixed financing provided by the social insurance institutions and the public authorities, with some contribution to treatment costs by patients;

(b) Out-patient treatment: financing provided by social insurance, with some contribution by the insured individuals;

(c) Community care and home care are not reimbursed by social insurance.

598. As regards measures taken to cap health cost increases for the elderly, in December 1991 and October 1992 Parliament introduced urgent, provisional measures pending the entry into force of the new Sickness Insurance Act; these were designed to control the increase in fees and the prices of services and to put a ceiling on contributions in each canton. Parliament also granted additional subsidies for cantons that already provide subsidies to lower contribution rates for low-income individuals.

599. In addition, supplementary benefits take account of the sickness insurance costs of the elderly; as already explained in the chapter on article 9, these benefits are provided if warranted by the insured individuals' economic circumstances. The purpose of the supplementary benefits is to supplement other income in order to cover to an appropriate degree the beneficiary's basic daily needs by allocating to him a minimum income designed, however, to provide for a modest standard of living only. For a single person, it is currently set at 16,660 francs (as at 1 January 1995). However, the income limit is raised for the reimbursement of certain costs, such as medical costs or sickness insurance contributions.

3. Distribution and level of use

600. In 1991, nationally there were 156.9 physicians for every 100,000 inhabitants. Basel-Town led with 279.5, followed by Geneva with 243.6. Being highly urbanized, these two cantons also reflect the town/country divide. The cantons of Appenzell Outer-Rhoden (71.9) and Schwyz (85.7) have the lowest density of physicians.

601. Countrywide, there are 47.3 dental surgeons for every 100,000 inhabitants, with the same gap between urban cantons (Basel-Town: 79.1 and Geneva: 62.4) and rural cantons (Appenzell Inner-Rhoden: 11.4).

602. There are 616.4 hospital beds for every 100,000 inhabitants for general care and 171.0 in psychiatric establishments. This ratio varies from canton to canton: as regards general care, the figure is highest in Graubünden (1,244.3), followed by Basel-Town (948.1), while the cantons of Schwyz (395.8) and Thurgau (382.0) are at the bottom of the list.

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[124] The new Sickness Insurance Act, of 18 March 1994, renders sickness insurance compulsory.

Table 28. Non-hospital health establishments: number of beds by type of establishment in 1991 (per 100,000 inhabitants)

Type of establishment	Beds
Residential (non-nursing) homes for the elderly	28
Homes: extensive nursing care	137
Homes: basic nursing care	123
Medical-social establishments: no nursing, basic nursing and extensive nursing	118
Medical-social establishments: other categories	673
Institutions for the disabled	424
Convalescent homes and spa establishments	61
Residential drug and alcohol addiction clinics	108
Psycho-social treatment institutions	23
Total	1,694

Source: Federal Statistical Office.

603. According to one survey, utilization of health services is not dependent on income. It does increase, however, as a function of insurance coverage. There is also a positive correlation between density and level of use. However, there is a negative correlation between level of use per individual and family size and education.

604. Medical practices provide some 75 million consultations each year. This would suggest that each member of the population seeks out-patient treatment 11 times a year on average.

Table 29. Use of different medical services, by sex and age (as a percentage of the respective groups)[125]

	Women			Men			
Service	15-39	40-69	70+	15-39	40-69	70+	Total
Blood pressure check	73.0	79.6	85.3	57.6	74.5	84.4	72.8
Measurement of cholesterol level	19.9	40.5	45.1	17.6	44.2	45.0	31.8
Cancer screening	73.0	62.5	30.4	-	22.6	33.6	-
Consultation with a physician	83.4	81.1	86.9	68.0	70.4	82.1	76.9
Consultation with a dentist	76.3	72.7	52.3	68.4	67.8	52.6	70.5
Physiotherapy	9.1	15.2	13.8	9.8	9.3	(7.4)	11.0
Hospitalization for 1 to 14 days	12.3	8.5	10.0	6.9	8.2	12.0	9.2
Hospitalization for 15 or more days	1.4	2.3	6.9	1.0	2.7	6.1	2.3

Source: Federal Statistical Office.

[125] During the 12 months preceding the survey.

J. Measures to combat alcoholism, tobacco addiction and drug addiction

605. In Switzerland, measures to promote health are essentially the domain of specialized private organizations. These organizations are often granted subsidies by the Confederation and the cantons. However, mention should be made of the establishment of a Prevention and Health Promotion Section in the Federal Office of Public Health, as well as the establishment, in 1989, of the Swiss Health Promotion Foundation.

1. Alcoholism

606. Article 32 *bis* of the Constitution gives the Confederation competence to legislate on the manufacture, import, sale and taxation of distilled beverages. The main aim of this provision, which adopted in 1885 and totally revised in 1930, is to reduce alcohol consumption. The Distilled Beverages Act of 21 June 1932 established a Confederation monopoly on the manufacture and import of alcohol obtained by distillation. The Constitution also contains an article banning the manufacture, import and sale of absinthe (art. 32 *ter*). The legislation on absinthe was included in the new Foodstuffs Act. Further, article 32 *quater* of the Constitution empowers the cantons to regulate the trade in alcoholic beverages. The constitutional provisions on alcohol, together with the Federal Alcohol Act, are currently being revised.

607. The right to keep an inn in which alcohol is served and the right to engage in trade in alcoholic beverages are subject to authorization in all cantons. Six of the twenty-six cantons have adopted a statute requiring beverage outlets to offer their customers a choice of alcohol-free beverages at a price lower than that of the same quantity of the cheapest alcoholic beverage. Similarly, 11 cantons have adopted a regulation requiring beverage outlets to offer a choice of non-alcoholic beverages at a price not exceeding that of the cheapest alcoholic beverages.

608. Television advertising of alcohol and tobacco products is prohibited. These provisions are now embodied in article 18 of the Federal Radio and Television Act of 21 June 1991. Advertising on local radio is governed by the Order on local radio broadcasting tests. An initiative to ban all alcohol and tobacco advertising was rejected by the population in 1993.[126] Publicity for spirits (in cinemas, for example) is authorized only if it is done by the producers themselves. The Order on foodstuffs prohibits alcohol and tobacco advertising that is targeted at young people.

609. While the average consumption of alcohol used to be constant at 11 litres per person per year, since the beginning of the 1990s there has been a slight reduction to 9.7 litres in 1994. Between 1975 and 1987, studies indicated a reduction in the frequency of alcohol consumption and a decrease in the amounts consumed. However, more people are drinking moderately (women and young people). According to the Swiss health survey conducted in 1992-1993, 10.5 per cent of men and 7.0 per cent of women consume a worrying amount of alcohol. The number of alcoholics is estimated at 140,000 per annum and the number of alcohol-related deaths at 2,500 to 3,500.

2. Tobacco addiction

610. Apart from the regulations on advertising that we have already mentioned with reference to efforts to combat alcoholism, other measures have also been taken. Packets of tobacco-based products, for instance, must carry the following message: Warning by the Federal Office of Public Health: Smoking can damage your health. From July 1998 tobacco product packages in Switzerland must carry warnings similar to those used in the European Union, pursuant to articles 10 to 12 of the Order on tobacco and tobacco products of 1 March 1995.

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[126] Popular vote on 28 November 1993.

Furthermore, the Federal Council adopted, on 16 August 1995, a comprehensive smoking prevention programme with a threefold focus on primary prevention, passive smoking and support for persons trying to give up smoking. This programme, with a budget of 2.5 million francs per year, will last until 1999.

611. It is worth noting that smoking is losing its prestige and that there is broader acceptance of prevention campaigns. Non-smoking areas have gradually been established in public places (hospitals and Government offices). The Federation of Swiss Physicians, in conjunction with OFSP, launched a national "Living without tobacco: doctors take action" national campaign in 1990. The aim of the campaign was to make physicians aware of the importance of their role and advice in helping people to give up smoking. This campaign had a broadly positive impact and is still going on. It is supported by a special training programme for physicians. In 1992, a further national campaign to prevent smoking was launched under the slogan "New pleasure without tobacco", its aim being to dissuade young people from taking up smoking and to persuade women to give it up. This campaign has focused exclusively, since 1993, on the target group of young people.

3. Drug addiction

612. Swiss drugs policy is based on a fourfold strategy, namely:

(a) Prevention, designed to prevent an increase in the number of users;

(b) Risk reduction and assistance in survival to help dependent individuals with active drug addiction;

(c) Treatment of drug addicts in three areas: medical, psychological and social;

(d) Suppression of the production, trade in and illicit consumption of legally controlled substances, supplemented by strict control of the use of narcotics to prevent their abuse.

613. In February 1991, the Federal Council decided on an appreciable increase in its commitment to drug-addiction prevention and to the treatment and rehabilitation of drug addicts by adopting a "package of measures designed to reduce drug-related problems". This new policy is to be evaluated on a regular basis by the Lausanne University Institute of Social and Preventive Medicine.

614. In support of scientific research on risk reduction, care and treatment, the Federal Council launched a programme for the medical prescription of narcotic drugs, in the form of heroin and methadone to be injected intravenously, initially for 700 individuals for a three-year period. On 3 October 1994, the Federal Council decided to extend these trials to 1,000 addicts. The implementation of this programme has led to a stabilization of the physical and mental health of some patients.

615. In no way does this programme exclude traditional therapy measures. On 3 October 1994, the Federal Council also decided to increase the supply of residential treatment aimed at helping patients to achieve a drug-free life. The federal authorities hope to achieve a 25 per cent increase in the availability of treatment and in the abstinence success rate within a five-year period.

Table 30. Different types of drug consumption, by sex, age and level of education (as a percentage of the respective groups) in 1992-1993

	Women	Men	Age groups[1]			Education[2]			Total
			15-39	40-69	70+	1	2	3	
Tobacco									
Smokers	24.1	36.5	35.6	28.8	12.6	27.8	31.9	28.8	30.1
Never smoked	59.8	37.6	50.5	45.4	58.6	56.7	46.7	44.5	49.1
Stopped over 2 years previously	13.8	22.7	10.5	23.6	27.2	12.8	18.7	23.9	18.1
Alcohol									
At least 3 times a day	0.4	2.2	0.7	1.7	1.4	1.4	1.4	0.9	1.3
Once a day	8.4	18.6	7.8	17.1	20.7	6.22	5.7	17.5	13.3
Several times a week	6.6	14.6	11.4	10.7	5.5	11.1	13.0	15.6	10.5
Once or twice a week	25.6	28.8	32.4	25.1	13.6	21.8	28.7	31.1	27.1
Less frequently	34.0	17.1	27.4	24.1	26.9	28.4	26.9	20.6	25.9
Never	22.3	9.4	16.8	13.4	23.1	25.1	13.5	8.4	16.1
Tranquillizers[3]									
Every day	3.4	1.9	1.2	3.3	5.9	3.5	2.6	1.7	2.7
Several times a day	1.0	0.6	0.5	0.9	(1.5)	1.1	0.7	(0.6)	0.8
Once or twice	0.8	0.6	0.4	0.6	1.8	0.9	0.6	(0.5)	0.7
Sleeping tablets									
Every day	4.0	1.7	(0.3)	2.8	13.8	4.7	2.6	1.6	2.9
Several times a day	1.3	0.8	(0.2)	1.3	3.3	1.2	1.0	1.1	1.1
Once or twice	1.4	0.6	(0.3)	1.2	32	1.2	1.0	0.9	1.0
Cannabis									
Current use	2.6	6.2				5.2	4.3	3.4	4.4
Used at least once	11.1	21.5				14.0	16.6	19.7	16.3
Hard drugs[4]									
Current use	(0.6)	0.7				(0.8)	(0.6)	(0.5)	0.6
Used at least once	2.6	5.7				3.8	4.0	5.6	4.2

Source: Federal Statistical Office, Swiss Health Survey.

[1] Figures in brackets: statistical reliability not guaranteed.

[2] Highest educational level attained:
1: compulsory schooling
2: secondary level II
3: tertiary level.

[3] In the seven days prior to the survey.

[4] Including heroin, crack, amphetamines, methadone and cocaine.

XIII. ARTICLE 13: THE RIGHT TO EDUCATION

A. Principal instruments applicable

616. The following are the principal instruments applicable:

National instruments:

(a) Compulsory schooling:

Federal Constitution, article 27;

(b) Secondary school II (General certificate of secondary education):

Ordonnance sur la reconnaissance des certificats de maturité (Order on the recognition of general certificates of secondary education) (ORM), dated 22 May 1968 (in force until 1 August 1995);

Convention administrative passée entre le Conseil fédéral suisse et la Conférence suisse des directeurs cantonaux de l'instruction publique concernant la reconnaissance des certificats de maturité (Administrative Convention concluded between the Swiss Federal Council and the Swiss Conference of Cantonal Directors of Public Education concerning the recognition of general certificates of secondary education) dated 16 January/15 February 1995;

Ordonnance du Conseil fédéral/Règlement de la CDIP sur la reconnaissance des certificats de maturité gymnasiale (Order issued by the Federal Council/Regulation of the CDIP on the recognition of general certificates of academic secondary education), dated 16 January/15 February 1995;

(c) Vocational training:

Federal Constitution, article 34 *ter*;

Loi fédérale sur la formation professionnelle (Federal Act concerning Vocational Training) (LFPr), dated 19 April 1978;

Loi fédérale sur les hautes écoles spécialisées (Federal Act concerning specialized colleges of higher education) (LHES), dated 6 October 1995;

Ordonnance concernant l'organisation, les conditions d'admission, la promotion et l'examen final de l'école professionnelle supérieure (Order concerning the organization, admission conditions, promotion and final examination of colleges of higher vocational training), dated 8 February 1983;

Ordonnance concernant les conditions minimales de reconnaissance des écoles techniques supérieures (Order concerning the minimum conditions for the recognition of colleges of higher technical education), dated 8 October 1980;

(d) University:

Loi fédérale sur l'aide aux universités (Federal Act concerning assistance to universities), dated 22 March 1991;

Arrêté fédéral instituant des mesures spéciales visant à encourager la relève universitaire durant les années 1992 à 1995 (Federal Decree instituting special measures to promote continuing university education during the period 1992 to 1995), dated 30 January 1992;

Accord intercantonal sur la participation au financement des universités pour les années 1993-1998 (Inter-cantonal agreement on participation in the funding of universities for the period 1993-1998), adopted by the Swiss Conference of Cantonal Directors of Public Education and the Swiss Conference of Cantonal Directors of Finance;

(e) Study grants:

Loi fédérale sur l'allocation de subventions pour les dépenses des cantons en faveur de bourses d'études (Federal Act on the allocation of subsidies to cover cantonal expenditure on study grants), dated 19 March 1965;

Loi fédérale concernant l'attribution de bourses d'études à des étudiants et artistes étrangers en Suisse (Federal Act concerning the provision of study grants to foreign arts and other students in Switzerland), dated 19 June 1987.

B. General

617. Although the Federal Constitution makes primary education compulsory (art. 27, para. 2), it embodies no general right to education. An initiative to incorporate in the Constitution "the right to an education corresponding to the aptitudes of each individual" was rejected by a popular vote in 1973.[127] This right was intended to include the prohibition of all discrimination, the obligation on the part of the State to grant financial assistance to gifted persons without means, the right of the disabled to appropriate training and the obligation to develop education. As the initiative was voted down, the Federal Tribunal refuses to recognize a fundamental unwritten right to education.[128] The Federal Council, an appeal body, has, however, made primary education, guaranteed by article 27 of the Constitution, a constitutional social right.[129]

618. In Switzerland, education is federally organized, with the result that the educational system is a veritable mosaic made up of 26 autonomous cantonal systems. A federal system of this kind essentially poses two types of problem: the distribution of powers and coordination among the players involved.

619. As far as the distribution of powers is concerned, article 3 of the Constitution provides that the cantons are sovereign to the extent that their sovereignty is not restricted by the Constitution. In education, the Constitution confers only limited powers on the Confederation. The cantons are therefore sovereign in virtually all matters relating to schooling, particularly the level of compulsory schooling. The cantons establish how their schools are organized, an area which they regulate by means of school legislation, which differs considerably from one canton to the next. The Constitution obliges them to provide primary education, which must be adequate, compulsory and free of charge (art. 27, para. 2) and secular (art. 27, para. 3). In the majority of cases,

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[127] Amendments to the Constitution require approval by a majority of the cantons and a majority of the population. This initiative was approved by a small majority of the population, but rejected by the majority of the cantons. The popular vote took place on 4 March 1973.

[128] ATF 103 Ia 398; ATF 114 Ia 216.

[129] JAAC 1976 (40), No. 37.

the cantons give the communes responsibility for establishing and maintaining certain types of school, particularly kindergartens and compulsory schools. In areas in which the Confederation has legislative competence, it frequently entrusts the cantons with application of the law. The cantons also have the right to be consulted.

620. The Confederation essentially has the following powers:

(a) It ensures the organization of adequate primary education that is compulsory, free of charge and under the responsibility of the civil authority in the canton;

(b) It has authority over vocational training in industry, the crafts sector, commerce, agriculture and the home-based economy;

(c) It regulates access to university courses in medicine and pharmacology and to the federal polytechnic colleges and in that regard recognizes, through an order, the school-leaving certificates (baccalaureate);

(d) It grants subsidies to the cantons for the provision of grants and subsidizes the cantonal universities.

621. Switzerland has no federal institution comparable to a ministry of education as such. Neither the Confederation nor the cantons have a single administration covering the entire school system. Within the Confederation, responsibilities are distributed between the Federal Office of Education and Science (OFES), which reports to the Federal Department of the Interior and deals with research, university policy, study grants and international cooperation, and the Federal Office for Industry, Arts and Trades, and Labour (OFIAMT), which reports to the Federal Department of Public Finance and deals with vocational training. This division of tasks sometimes occurs at cantonal level but, in most cases, vocational training is assigned to the public education department.

622. Coordination among the different cantons and between the cantons and the Confederation is mainly achieved through the establishment of institutions. The oldest such institution is the Conference of Cantonal Public Education Directors (CDIP), established in 1897. Its role has long been restricted by the compartmentalization of the cantonal systems. It was only after the Second World War and the growth in the mobility of individuals that coordination was appreciably increased. Between 1965 and 1970, the CDIP was restructured and four regional conferences were established.[130] Other institutions have also been set up, such as the Swiss Documentation Centre for Teaching and Education (1962), the Swiss Science Council (1965), the Swiss University Conference (1968) and the Federal Office of Education and Science (1969). A number of research and training institutes have also been established at the federal or inter-cantonal level.[131]

623. Outside the institutional framework, inter-cantonal coordination was considerably strengthened by the adoption, in 1970, of an Inter-cantonal Concordat "to develop schools and to harmonize relevant cantonal legislation" (art. 1). To date, 25 of the 26 cantons have acceded to the Concordat.

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[130] The four CDIP regions are: French-speaking Switzerland and Ticino; north-western Switzerland; central Switzerland; and eastern Switzerland.

[131] Swiss Centre for the Further Training of Secondary School Teachers, at Lucerne (1969); Educational Research and Documentation Institute for French-speaking Switzerland (1969); Swiss Centre for the Coordination of Educational Research, at Aarau (1971); Swiss Pedagogical Institute for Vocational Training (1972); Swiss Remedial Teaching Secretariat, at Lucerne; Research and Documentation Service for Central Switzerland (1974).

624. The cantons that have acceded to the Concordat have undertaken to coordinate their school legislation as follows:

(a) Compulsory school entry for all children who have reached their sixth birthday by 30 June; possibility of bringing this date forward or putting it back by four months;

(b) Compulsory schooling: nine years at least, with a minimum of 38 weeks' schooling per annum;

(c) Length of schooling up to the examination for the general certificate of secondary education: 12 years at least, 13 years at most;

(d) Beginning of the school year: between mid-August and mid-October.

625. Putting these principles into practice has proved rather problematic, particularly with regard to the beginning of the school year, and the process of adjustment took over 15 years; but these four objectives have now been attained.[132]

C. Pre-school education

626. The cantons and/or the communes are responsible for organizing and financing pre-school education (infant school). Infant school is optional and free of charge and is available to children between three and seven years of age, depending on the canton. In German-speaking Switzerland, infant education is essentially play-based, whereas in French-speaking Switzerland and Ticino emphasis is also placed on preparation for school. The social role of infant school is increasingly acknowledged, particularly in assisting the early integration of children of foreign origin.

627. Two thirds of eligible children attend the first year of infant school and nearly all children in the relevant age class attend the second year. Hence, only 2 per cent of children currently enter primary school without having attended infant school beforehand, and the average period of pre-school attendance is 1.8 years.

D. Compulsory education (primary and secondary I)

628. The cantons, in conjunction with the communes, are responsible for the organization and financing of compulsory education in the primary and secondary I category. Compulsory education is free of charge and lasts, on average, nine years, from the ages of 6 to 15 years. In two cantons (Appenzell Outer-Rhoden and Inner-Rhoden), the period of compulsory schooling is currently only eight years. However, nearly 90 per cent of pupils voluntarily undertake a ninth school year, which means that the period of compulsory schooling can be set at nine years overall. School attendance during compulsory schooling is virtually 100 per cent, as shown by table 31.

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[132] The canton of Ticino has not acceded to the Concordat because its school system envisages less than 38 weeks per year and the compulsory age for starting school is under six years.

Table 31. School attendance by age, in 1980/81, 1985/86 and 1991/92 (as a percentage); compulsory schooling

Age	4	5	6	7	8	9	10	11	12	13	14	15
born in	1987	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977	1976
Total												
1980	16.2	62.6	93.9	98.2	98.0	98.4	98.3	98.4	98.4	98.3	97.9	95.8
1985	15.0	65.1	97.0	98.8	98.4	98.3	98.4	98.5	98.4	98.3	98.8	96.0
1991	26.5	77.7	99.5	100	99.8	99.9	99.5	99.4	99.6	98.8	98.2	96.4
Male												
1980	15.9	62.2	94.3	97.9	97.9	98.2	98.3	98.1	98.3	98.4	97.9	96.5
1985	15.1	64.9	97.3	99.0	98.2	98.2	98.3	98.5	98.1	98.3	98.6	96.8
1991	26.2	77.6	99.6	100	100	100	99.7	99.7	100	98.9	98.3	97.0
Female												
1980	16.5	62.8	93.7	98.2	98.1	98.4	98.2	98.8	98.5	98.2	97.9	95.2
1985	14.9	65.4	97.1	98.6	98.5	98.4	96.0	98.5	98.7	98.4	99.0	95.2
1991	26.9	77.7	99.3	100	99.6	99.7	99.3	99.1	99.2	98.8	98.1	95.9

Source: Federal Statistical Office.

1. Primary education

629. Article 27 of the Constitution makes the cantons responsible for providing "primary education, which must be adequate and exclusively under the direction of the civil authority. Such education is compulsory and, in public schools, free of charge".

630. Primary education is *compulsory*, and all children, regardless of their nationality, origin or sex, must receive adequate primary education in the school of the commune in which they reside.

631. Primary education must be *free of charge* for all children attending State schools. The communes are therefore obliged to establish schools that are accessible to the children living in their district. This principle implies a certain proximity to school. Consequently, a pupil who has a particularly long journey to make in order to reach the school of the commune in which he resides is entitled to attend, free of charge, a school in a neighbouring commune if the journey is appreciably shorter.[133] The Federal Council has also ruled that "the principle of free education requires that the commune should bear the cost of a bus service where the bus is used to transport pupils who would otherwise have an excessively long journey".[134] Doctrine and previous rulings indicate that school supplies and equipment, on the other hand, should not be provided free of charge. In practice, however, most cantonal legislation lays down that school supplies are to be provided free of charge.

[133] JAAC 1980 (44), No. 19.

[134] JAAC 1955 (25), No. 10.

632. The education provided in State schools must also be secular. The principle of the religious neutrality of schools, guaranteed by article 27, paragraph 3, of the Federal Constitution, covers all State schools, regardless of level.[135]

633. The organization of primary education varies from one canton to another. In most cantons, the primary level covers six years, and begins between the ages of five and seven years; in four cantons it lasts for five years and in one canton (Vaud) only four years.

634. The structure of primary schools is relatively uniform in all cantons. In principle, a single teacher is responsible for the class. However, there are a few exceptions, where teaching is done in tandem. At the same time, it is not unusual for "specialist" teachers to be employed for certain special subjects such as handicrafts, gymnastics or a second language. Classes are normally organized according to grades. In underpopulated regions, some classes may include children from several grades. Experiments have also been conducted in some cantons to eliminate the different grades so that teaching can be paced to suit the individual child. During the 1992/93 school year, the average number of pupils in primary classes was 19.4.

635. The academic week varies from 20 lessons (first and second primary class) to 34 to 36 lessons (fifth and sixth classes). The curriculum usually gives priority to the "basic life skills" (reading, writing and mathematics), knowledge of the environment (natural sciences, history and geography), the arts (singing, music and drawing) and physical education. The teaching of a second national language (German in French-speaking Switzerland and French, without exception, in German- and Italian-speaking Switzerland) has been introduced from the fourth or fifth primary year.

636. Education is provided in the morning and afternoon. Depending on the canton, pupils have all day free on Saturday, or Saturday afternoon and another half-day during the week or, alternatively, Saturday afternoon and another full day free. The school year ranges from 36.5 to 40 weeks, depending on the canton. The school calendar includes holidays in February or March, at Easter, in summer, in autumn and at Christmas. The longest holiday period, lasting between five and nine weeks, is in the summer.

2. Secondary I education

637. The cantons are also responsible for organizing secondary I education, and it is here that the most striking differences appear between cantons. This level relates to basic general training and preparation for an apprenticeship or further studies. It also has a selection and guidance function.

638. The length of secondary I education varies according to the duration of primary education: it currently lasts for three years in most cantons and four or five years in others. In virtually all cantons, except Ticino, Geneva and part of Valais, secondary I is divided into three or four branches and is thus rather narrowly selective. Some sections focus on elementary requirements and others on more extensive requirements. The sections that focus on elementary requirements prepare pupils for vocational training courses and involve about a third of the pupils in a given age group, with a higher proportion of boys than girls. The sections that focus on more extensive requirements account for two thirds of the children in an age group and are subdivided into two sections: high-requirement (pre-gymnasium), providing preparation for secondary schools, and medium-requirement (general sections) which provide preparation for more demanding vocational training. Ticino, Geneva and part of Valais have opted for a single mixed-requirement type of school (preparatory years) and several cantons, without establishing actual multipurpose schools as such, allow for some features of such

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[135] ATF 3 706; JAAC 1948-50 (19/20), No. 67; AT 107 Ia 261ss; JAAC 1983 (47), No. 32.

schools, such as the possibility of moving between sections, the inclusion of optional courses or courses at different levels, or the joint teaching of certain subjects to pupils in different sections. There is a discernible movement towards such a cooperative form of organization, in which pupils do not have to make early choices which are then relatively irreversible.

639. Teaching in all the sections includes the mother tongue, mathematics, a second national language, natural sciences, geography, history, civic education, artistic education and physical education. In the sections that focus on elementary requirements, emphasis is also placed on manual skills; in the sections that focus on more extensive requirements, there may be a third language, bookkeeping, shorthand and typing, technical drawing or, for the pre-gymnasium classes, Latin and Greek.

640. Academic counselling is well-developed. In principle, each establishment has the services of a counsellor, who sees pupils individually. Work experience courses, lasting about a week, also enable young people to acquaint themselves with what various occupations actually involve on a day-to-day basis.

641. Between the end of compulsory schooling and secondary II, increasing numbers of young people spend a tenth "transitional" year. This optional, additional year enables youngsters who are still undecided to supplement and extend the education they have received and to prepare for making a choice as to their further education path.

E. Secondary II education

642. After compulsory schooling nearly 90 per cent of the children in a given age group continue their education, as indicated by table 32.

Table 32. School attendance rate by age in 1980/81, 1984/85 and 1990/91; post-compulsory schooling

Age	16	17	18	19	20	21	22	23	24	25
born	1975	1974	1973	1972	1971	1970	1969	1968	1967	1966
Total										
1980	82.7	78.8	70.0	50.3	27.8	18.0	14.8	13.0	11.3	8.7
1985	87.7	84.7	76.2	54.5	30.4	20.3	16.6	14.6	12.7	10.2
1991	89.9	86.8	78.5	56.0	32.7	23.4	19.9	17.9	15.7	13.4
Male										
1980	89.6	87.6	80.1	60.2	31.3	20.9	19.5	18.4	16.3	12.7
1985	92.8	91.2	84.8	64.8	34.0	22.3	20.2	19.2	17.4	14.3
1991	92.6	90.3	84.5	63.8	36.0	25.2	24.0	22.6	20.9	18.3
Female										
1980	75.4	69.8	59.4	40.0	24.1	15.1	10.1	7.5	6.2	4.8
1985	82.3	78.0	67.0	43.9	26.5	18.3	12.9	9.9	7.9	6.2
1991	87.0	83.0	72.1	47.9	29.3	21.6	15.8	13.1	10.6	8.6

Source: Federal Statistical Office.

643. Secondary II education includes two types of training: general and vocational. One of the special features of the Swiss education system is the considerable importance given to vocational training, as demonstrated by

the fact that at the end of compulsory schooling seven out of ten young people opt for vocational training. Only a minority of pupils pursue general academic courses in a secondary school leading to university. However, since the end of the 1980s there has been a steady decline in the proportion of pupils opting for vocational training, with ever more pupils deciding on general academic-type schools.

1. General education

(a) Secondary schools ("gymnasium")

644. "Gymnasiums" are the main second-level schools in secondary education providing a general education. These are academically demanding schools that have a virtual monopoly on access to university. This factor is of considerable importance because, although all cantons have "gymnasiums", they do not all have universities. It is therefore essential for the cantons that do not have universities to have national norms to guarantee the conditions of access to further education. A federal regulation, the Order on the recognition of general certificates of secondary education (ORM), has greatly facilitated coordination. Although it is true to say that this order originally related only to access to polytechnic colleges and to university medical courses, it has in practice acquired a more general scope.

645. The ORM in force until 1 August 1995 recognized five types of general certificates of secondary education:

Type A: Ancient languages;

Type B: Modern languages and Latin;

Type C: Mathematics and natural sciences;

Type D: Modern languages; and

Type E: Economic sciences.

646. Alongside these certificates, which are recognized federally, and which provide access to all university courses, there are other specializations which are recognized only at the cantonal level and do not give access to all universities, namely the arts and socio-pedagogical certificates.

647. A gymnasium education varies from one canton to another, but it must last for at least four years. In principle, this type of education begins at the end of the compulsory schooling period. The ORM-based curricula are technically no more than recommendations, but, in reality, the compulsory disciplines are strictly regulated. There are three basic disciplines (mother-tongue, second national language and mathematics), six compulsory disciplines (history, geography, physics, chemistry, biology and music/drawing) and two disciplines that are specific to the specialization. The average number of hours of teaching ranges from 3,000 to 4,000. The academic week is about 36 hours and the school year has a minimum of 38 weeks. The examinations for the general certificate of secondary education are organized by the cantons and are based on the results achieved in the aforesaid 11 disciplines.

648. The ORM has been extensively revised and transformed into a new regulation regarding the recognition of secondary education certificates. This new regulation, adopted as a Federal Council Order/CDIP Regulation (RRM), came into effect on 1 August 1995. It differs from the previous ORM both in substance and form. As regards form, the recognition of such certificates will henceforth be by common agreement between the

Confederation and the cantons. In a convention signed by the Federal Council and the CDIP, the two parties agreed to establish a common consultative organ, the Swiss Commission on General Certificates of Secondary Education, with the task of advising on whether or not cantonal certificates should be recognized. The number of disciplines counting for the school-leaving certificate was reduced from 11 to 9 and the choice offered to pupils will be more varied. The new examination has seven basic disciplines, one special option, one supplementary option and one special project (arts. 9 and 10 RRM). The new certificate is shaped by the combination of a special option with the basic disciplines and the supplementary option. This combination replaces the system with five types of certificate that has been in effect until now. A combination of economics and law for example may constitute a basic discipline, a special option or a supplementary option. Philosophy and psychology constitute a special or supplementary option only. The third national language is also upgraded, even if it is not made a compulsory subject.

649. The number of gymnasiums in relation to the population varies greatly from one canton to another. In the agricultural regions and in the regions in which primary teachers are trained in teacher training colleges (see below), the number of individuals who possess general certificates of secondary education is far lower than in urban areas or cantons in which teacher training is provided by universities. In 1992/93, for Switzerland as a whole, 14 per cent of pupils in a given age group had obtained a secondary education certificate.

(b) Teacher training colleges

650. Many cantons require pre-school and primary school teachers to attend Secondary II-level teacher training colleges, some of which award diplomas that give access to higher colleges. In other cantons, teacher training is tertiary-level and requires a certificate of secondary education. An inter-cantonal agreement was signed to the effect that, as from 1995, these diplomas were to be mutually recognized. Discussions about reform designed to introduce post-secondary training are under way. In time, the teacher training colleges could be replaced by pedagogical colleges.

(c) Diploma schools

651. These are full-time schools providing a general education whose academic demands are lower than those of the gymnasiums. They are designed to supplement a basic, general education, to offer pre-vocational options and to provide educational and vocational guidance for pupils who have not finally decided on a career. The diplomas awarded by these schools, after teaching lasting two to three years, are not in themselves a sufficient basis for taking up an occupation, but give access to certain types of vocational training. Teaching is focused essentially in the areas of health, teaching and social work. The status of these schools, compared with the specialized higher colleges, has yet to be defined. Proposals have been put forward that the diploma they award should give access to the specialized higher colleges.

2. Vocational training

652. Vocational training is one of the few areas of education for which the federal authorities have primary responsibility. By virtue of article 34 *ter* of the Constitution, the Confederation has the right to legislate "on vocational training in the fields of industry, arts and crafts, commerce, agriculture and the home-based economy". This list is exhaustive, so that the Confederation is not empowered to legislate in other vocational areas. The Vocational Training Act (LFPr), adopted by the Confederation on 19 April 1978, is the current legal basis for vocational training in the areas covered by article 34 *ter* of the Constitution. Training in vocational areas not covered by the Act is governed either by special federal laws or by cantonal laws. However, in numerical terms, the scope of application of the LFPr is appreciable, since 85 per cent of young people undergoing vocational training complete an apprenticeship governed by this Act.

653. Although the Confederation has primary responsibility for vocational training, it shares certain tasks with the cantons and with professional associations. This means that the cantons may legislate in the areas that do not come under federal competence. Furthermore, they are the executive organs for federal legislation and have the right to be consulted at all levels. Because of the close links between vocational training and the labour market, the private sector also plays an active role. The professional associations are responsible for organizing introductory courses, in addition to which they run vocational institutes and play a part in defining occupations and professions, preparing training programmes and organizing examinations.

(a) On-the-job apprenticeship

654. On-the-job apprenticeship is the most common form of training and the option chosen by 75 per cent of students undergoing vocational training.

655. On-the-job apprenticeship is designed to train the apprentice for a particular occupation. It is designed according to the principle of the "dual system", which involves two parties—the enterprise and the vocational college. The role of the enterprise is to provide training in practical skills and that of the school is to provide the necessary theoretical teaching and general education. There is often a third element, the introductory courses, which turn apprenticeship into a "triple system".

656. Depending on the vocation concerned, the apprenticeship may last two, three or four years. Before training begins, the apprentice concludes an apprenticeship agreement with his master, the content of which must be approved by the cantonal authority. Authorization is given only if the master possesses the professional skills and personal qualities required to instruct apprentices and if the agreement complies with current legal provisions. Apprentices receive a monthly wage, ranging from a few hundred Swiss francs to over a thousand, depending on occupational branch and year of training.

657. The practical training in the enterprise is often preceded by introductory courses, which are compulsory for some occupations. These courses are organized for each occupation by the relevant professional associations and are subject to approval by the Federal Department of Public Finance (DFEP). The courses are given outside the enterprise, last two or three weeks, and are designed to initiate apprentices in the basic skills required for the work concerned.

658. The enterprise trains the apprentices in work skills and procedures. The content of practical training is established in the specific apprenticeship regulations relating to each occupation, as laid down by the DFEP. Some 300 separate sets of regulations are currently in force. The apprentices work under the supervision of a master, and most of the practical training involves simply assisting in the ordinary work of the enterprise.

659. The vocational college provides the theoretical vocational knowledge that is essential to enable the individual to carry on a particular occupation and to develop his general education. The vocational colleges are required to accept all young people who have entered into an apprenticeship contract. The cantons must therefore ensure that vocational schools are established or else assist students in attending schools outside their territory. Responsibility for organizing vocational training lies with the cantons, which may administer the vocational schools themselves or else entrust this task to the communes or to the professional associations. Vocational training is free of charge and compulsory and occupies one or two days a week. The classes are organized according to occupation and further subdivided according to age. The content of the vocational training is established by the OFIAMT.

660. A higher vocational college may be attached to the vocational college. The former provides apprentices who have the required aptitudes and abilities with more extensive training in order to develop work skills and

to promote the individual's personal development and his access to more demanding training (art. 29 LFPr). Access to the higher vocational colleges is on the basis of an entrance examination or the examination taken at the end of compulsory schooling. Compulsory vocational training is supplemented by additional courses, but the theoretical instruction may not add up to more than two days a week. These schools have only been a partial success among apprentices and should be given fresh impetus by the recent creation of the certificate of vocational education.

661. An apprenticeship is deemed to be completed when an apprentice has successfully passed the examination at the end of the apprenticeship period. The examination conditions are established by the Confederation, and cantons are responsible for its organization. The Confederation may also call on the professional associations to organize the examination. The apprentice must demonstrate that he has acquired the knowledge (theoretical examination) and the know-how (practical examination) needed to pursue his chosen occupation. If the apprentice passes the examination he is given a Federal Certificate of Aptitude (CFC), which authorizes him to claim professional qualifications. In 1989/90, 93 per cent of the people who took the final examinations obtained the CFC.

(b) Vocational colleges providing full-time education

662. ***Craft schools***. Applied arts or crafts schools are an alternative to on-the-job apprenticeship. These schools provide practical and theoretical training on a full-time basis and also award a Federal Certificate of Aptitude. The importance of this type of training varies from one to craft to another and from one region to another.

663. ***Commercial schools.*** Vocational training may also be provided by full-time attendance at a commercial school, whether a State school or a private one recognized as providing a public service. This training is designed "to provide, through a course lasting three or four years, an extensive general education and vocational training to prepare the student to carry on an occupation in a commercial enterprise, an enterprise that provides services or an administration" (art. 46 LFPr). The final examinations are recognized by the Confederation and entitle the student to claim professional qualifications.

(c) Vocational certificate of education

664. This course, created in 1993, is designed to upgrade apprenticeship and offer apprentices the possibility of following further training. This innovation has also led to the establishment of secondary II-level diplomas with international status. Four types of such vocational studies have been introduced: technical studies, commercial studies, craft studies and arts studies. Priority has been given to the course of technical studies, which came into being in 1993, followed by commercial studies, which first became available to students for the start of the 1994 academic year.

665. Studies under this course are intended to supplement on-the-job training and the syllabus of vocational colleges, following the model of the higher vocational colleges. The vocational colleges have complete freedom to provide such studies and they may be organized in different ways: incorporation as part of the apprenticeship (enlarged vocational school), full-time education after the third year of apprenticeship or training on a full-time or in-service course following the completion of the apprenticeship. The Confederation simply lays down framework programmes for each course of study (distribution of lessons, definition of compulsory studies, final examinations), but it is up to each school to prepare its own curriculum. The vocational certificate gives access, without further examination, to the higher technical colleges (ESCEA, ETS engineering schools, etc.).The full effects of this reform will not be felt until these higher technical schools are upgraded to higher specialized colleges (see below).

666. In 1993/94, the first year in which this course was available, 3,685 apprentices embarked on training to obtain a certificate of technical vocational education.

(d) Elementary training

667. For young people wishing to undergo essentially practical training, the Vocational Training Act established elementary training, which lasts one or two years and provides students with the know-how and practical knowledge required for simple manufacturing or working procedures. Students who follow this training, which supplements practical on-the-job training, receive general instruction covering a number of occupations and areas of learning in special classes one day per week. Students who complete their elementary training receive an official certificate.

(e) Training not governed by the Vocational Training Act

668. In the agricultural sector, some 8,000 people opt for training in farming or training for specific agricultural occupations (cheese-making, viticulture and poultry-farming). Their training is governed by the Federal Agriculture Act. In the forestry sector, the Federal Forests Act governs the training of some 900 lumberjack/forestry workers.

669. Training in paramedical activities is the responsibility of the cantons, but they have delegated this to the Swiss Red Cross. The training provided by the Swiss Red Cross covers some 20 occupations, ranging from nurse to dietitian. Such training lasts between one and four years and combines theoretical instruction with practical courses. Furthermore, in the non-medical occupations, 4,000 young people receive training independent of the Red Cross, which is organized directly by the cantons or by the professional associations (physicians' or dentists' organizations).

Table 33. Training of individuals aged 20 years (secondary II) since 1977/78, by sex (as a percentage)

Training ending at secondary II level	1977/78	1981/82	1985/86	1989/90	1991/92
Vocational training					
Total	59	65	70	73	67
Men	71	75	78	78	73
Women	47	55	62	67	60
School-leaving certificate					
Total	10	11	12	13	14
Men	12	13	13	13	14
Women	8	10	11	12	14
Teaching professions					
Total	3	2	2	2	2
Men	1	1	1	1	1
Women	5	4	4	3	4
No training after compulsory schooling					
Total	28	22	16	12	17
Men	16	11	8	7	12
Women	40	31	23	18	22

Source: Federal Statistical Office.

F. Higher education

670. Higher education includes the "higher colleges", which are of university level, and non-university institutions that are open to those who have completed their higher secondary education or a recognized vocational apprenticeship. Universities do not, therefore, have a monopoly on higher education. About 15 per cent of a given age group pursue academic studies, but this proportion is increasing all the time.

671. The plan to establish specialized higher colleges will diversify the options available in tertiary education. In future, the concept of the "higher college" will apply to two categories of institution: firstly, universities and polytechnic colleges and, secondly, colleges specializing in vocational guidance. These two categories of higher college will play different roles, while being hierarchically equivalent.

1. Higher education in universities

672. The higher education establishments known as "higher colleges" comprise the two federal polytechnic colleges in Zurich and Lausanne, and the eight cantonal universities of Basel, Bern, Geneva, Fribourg, Lausanne, Neuchâtel, Zurich and St. Gallen. These are joined by the Lucerne Higher College, which has faculties of Catholic theology, philosophy and history. Switzerland is therefore among the countries with the highest ratio of higher education institutions per head of population (one university for every 687,000 inhabitants on average). In 1994/95 there were 89,262 students (including 41.3 per cent women), which represents an average of 7.85 per cent of the population in the 20-25 year age range.

673. The two polytechnic colleges are under the direct authority of the Confederation pursuant to article 27, paragraph 1, of the Constitution. The other universities come under the cantonal authorities, but have a relatively large degree of autonomy. Their structure is, however, the same: all the universities have faculties of law, natural sciences, economic and social sciences, the humanities and the arts. There are faculties of medicine in the universities of Basel, Bern, Geneva, Lausanne and Zurich. The University of St. Gallen specializes in economic and social sciences and law. The polytechnic colleges focus on the exact sciences, the natural sciences, engineering and architecture. The two polytechnic colleges and the cantonal universities also have an important role in research, particularly fundamental research.

674. A student who wishes to enter a university college must, in theory, hold a school-leaving certificate or a recognized equivalent diploma. In view of the constant increase in the number of students, discussions are under way on the introduction of a *numerus clausus* in the universities. The aim would be to establish a system of administering available places based on the use of a waiting list or transfer to a different university.

675. The academic year is divided into two semesters: the winter semester (mid-October to early March) and the summer semester (mid-April to mid-July). The length of study to obtain a degree is usually between six and eight semesters (12 to 13 semesters in the case of medical studies). Universities award three types of certificate: bachelor's degree, diploma and doctorate.

676. The cost of university study varies according to the particular university, the subject of study and the length of the course. The registration fees also vary, according to the origin of the student (whether he is resident in the canton, resident outside the canton but in Switzerland or foreign). Since 1992, the deterioration in the universities' financial situation has led to an increase in registration fees which varies from one university to another. This increase has prompted a number of reactions, and one student association (the Students' Union at Zurich University) has brought a public-law complaint before the Federal Tribunal on the ground that the

increase in registration fees at Zurich University[136] is contrary to article 13, paragraph 2 (c), of the Covenant. This complaint was rejected by the Federal Tribunal in its ruling of 11 February 1994.[137]

677. In this ruling, the Federal Tribunal considered that the provisions of the Covenant, in particular article 13, paragraph 2 (c), are not directly applicable and are addressed only to the legislator.[138] An individual may not, therefore, assert a right to the progressive introduction of free further education. The Federal Tribunal also examined whether this article did not, at the very least, exclude an increase in registration fees. It concluded that such was not the case. It considered firstly that this provision was not sufficiently precise to be the basis of a directly applicable right. Secondly, it considered that the legislator had the freedom to choose the means to attain the objective sought, namely to make higher education accessible to all. This objective may be achieved by other means than the progressive introduction of free education, and the term "in particular" indicated only one of the possible means.

678. University funding is a particular problem in that only eight cantons are university cantons in the strict sense of the term. This is why, on the basis of the Federal Act concerning assistance to universities, the Confederation has provided financial support for the university cantons since 1968. This support takes the form of ordinary subsidies (basic subsidies and subsidies to cover investments) and extraordinary subsidies designed to cover immediate university policy needs. The Confederation also subsidizes the universities through the Swiss National Scientific Research Fund, which finances national research programmes.

679. The first inter-cantonal agreement on participation in the funding of universities was adopted in 1979. According to this agreement, the university cantons guarantee entrants from other cantons the same rights as students from the cantons themselves. In return, the non-university cantons, as well as the other cantons, agree to contribute to university funding. The agreement was renewed in 1988 and in 1992 in order to adjust and increase the amounts of the cantonal contributions to take account of developments in the situation.

2. Higher education outside universities

680. Higher education outside universities, which opens the way to vocational studies upon completion of basic vocational training, has developed considerably. It is now highly diversified, owing in part to federalism and in part to the empirical development of this type of education. The establishments providing higher, vocationally oriented education cover 20 or so occupational branches, some very different from the others.

(a) Vocational colleges

(i) ETS engineering institutes

681. The ETS (higher technical college) engineering institutes train engineers, architects, ETS chemists and other qualified professionals. Students who wish to be admitted must hold a Federal Certificate of Aptitude (CFC), a certificate of vocational education or a general secondary certificate, supplemented by on-the-job

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[136] The registration fees rose from 300 francs in 1991/92 to 450 francs in 1993/94 and 600 francs in 1994/95.

[137] ATF 120 Ia 1 (appended).

[138] According to consistent case-law of the Federal Tribunal, the provisions which, seen in their context and in the light both of the object and of the aim of the Treaty, are unconditional and sufficiently precise to produce a direct effect and to apply as such to a particular case and to constitute the basis for a concrete decision are those which are deemed to be directly applicable (ATF 112 Ib 184; ATF 111 Ib 72).

training of at least 12 months. The courses last six semesters (full-time) or nine semesters (part-time) and lead to a diploma. In principle, it is possible to move from a school of this type to a polytechnic college. There are currently 15 full-time engineering institutes and 10 part-time (or evening class) institutes for students in part-time gainful employment.

682. The institutes are generally administered by one or more cantons, but also by professional associations (particularly in the case of the part-time institutes). A conference of ETS engineering institute directors ensures coordination and cooperation among the different establishments.

(ii) Technical colleges ("Technicum")

683. The education provided in the technical colleges is based on practical application and experience directed towards the training of middle-management staff. There are 37 technical colleges, offering a range of 32 specializations. The programme includes general basic education and vocational training and leads to a technician's diploma.

(iii) Higher Management Colleges for Economics and Administration (ESCEA)

684. These colleges provide management training, i.e. a basic knowledge of economics and a general education to enable students to occupy management posts in the fields of economics or administration. Students who wish to be admitted must hold a Federal Certificate of Aptitude in Commerce or a diploma issued by a higher commercial college, or else a school-leaving certificate supplemented by practical on-the-job training lasting at least two years. The courses last six semesters (full-time) or seven to ten semesters (part-time).

685. These management colleges award an ESCEA diploma which, in certain cases, allows the individual to move on to a polytechnic college or university. There are currently 10 schools of this kind. Following the example of the ETS engineering institutes, the ESCEA directors have established a conference and have an ad hoc federal commission.

(iv) Higher Colleges for Social Services Studies (CSESS) and Special Education Studies (CSEES)

686. The CSESS/CSEES provide training to enable students to enter the social occupations, such as social worker, sociocultural activity leader or specialized teacher.

687. The 17 CSESS/CSEES establishments in Switzerland enjoy federal subsidization by the Federal Office of Education and Science and the Federal Office of Social Insurance and also, in most cases, cantonal subsidies.

(b) Colleges of specialized higher education

688. Since the recent creation of the certificate of vocational education, the Federal Council has adopted a draft text upgrading these vocational colleges (engineering institutes, ESCEA, etc.) to the status of colleges of specialized higher education (HES). The bill was adopted by Parliament on 6 October 1995. This important reform is designed to make vocational apprenticeship more attractive by offering good-quality higher education that is both scientific and practical. The aim is also to impose a unifying system on a field that has so far been extremely diverse. A further benefit is that the diplomas will be recognized in Europe as university diplomas, which is not currently the case.

689. The specialized higher colleges are considered equivalent to but different from universities. Admission to the specialized higher colleges is open principally to those who have completed basic vocational training and

also have a certificate of vocational education. However, the move to improve freedom of movement between types of education is also opening up access to those who hold a general certificate of secondary education and have at least one year's vocational experience. The teaching provided by the specialized higher colleges is essentially based on practical training and lasts for three years, in the case of full-time training, or four years in the case of individuals in employment. These colleges award diplomas. A specialized higher colleges council is to be established, with the task of advising the executive authorities. Initially, only the ETS engineering institutes, the ESCEA management colleges and the higher colleges of applied art would be promoted to the status of the specialized higher colleges.

(c) Professional and higher professional examinations

690. The professional associations are authorized to organize professional and higher professional examinations which are recognized by the Confederation. These examinations make it possible to check whether candidates have the necessary skills and knowledge to occupy management positions. Preparation for the examinations is unrestricted, but courses are organized by the professional associations, private colleges and other official institutions. Candidates who pass the professional examination receive a Federal Certificate. Candidates who pass the higher federal examination receive, depending on the profession concerned, a Federal Master's Certificate or a Federal Diploma.

Table 34. Some diplomas awarded in 1994

	Number	Proportion of successful women candidates (%)
Secondary II		
General certificate of secondary education	13,691	50.3
Primary teacher's certificate	2,136	71.1
Federal certificate of aptitude	47,443	41.8
Commercial college diploma	2,499	66.1
Diploma awarded by the Swiss Red Cross	3,954	90.6
Elementary training certificate	1,650	37.5
University tertiary		
Degrees and diplomas	8,376	37.4
Post-graduate degrees	922	40.3
Doctorates	2,587	25.9
Non-university tertiary		
ETS diploma	3,489	3.8
ESCEA diploma	638	16.3
ET diploma	1,692	3.1
Other EPS diploma	757	64.4

Source: Federal Statistical Office.

G. Adult education

691. Adult education, recognized as an integral part of the education system in Switzerland, is encouraged by the Confederation, the cantons and the communes. However, it is dependent on the private sector to a great extent. The term "adult education" covers various forms of education: return to studies, further vocational training or courses to promote personal development.

692. The possibility for adults over the age of 20 years to resume studies with a view to obtaining a general certificate of secondary education has existed since the beginning of the century, primarily in private colleges. Since the 1960s and 1970s, several cantons have established public institutions, and five such institutions are currently in existence,[139] alongside a large number of subsidized or unsubsidized private establishments. In the State colleges, the courses last between three and four years and lead to a federal certificate of secondary education, which gives access to all Swiss universities.

693. In 1988/89, a total of 2,300 students attended a college to study for an adult secondary education certificate, a figure that has remained stable for many years. The vast majority of students follow part-time training, alongside an occupational activity (evening class). Two thirds of the students are young people under the age of 25 years, although the proportion in this age range is tending to diminish in favour of students over 30. Women account for 44 per cent of the total student population.

694. The Vocational Training Act (Art. 41 LFPr) embodies an original approach that enables untrained adults to take the final apprenticeship examination in the field in which they work. The Act lays down that the individual must have carried on the vocation in question for a period of at least one and a half times that set out for the apprenticeship and be able to prove that he has received vocational instruction or acquired vocational knowledge by some other means.

695. In 1990, the Federal Council decreed special measures to encourage continuing university study. This programme provided for the financing of supplementary study periods, partly in order to provide an opportunity for further specialization and partly for the acquisition of new scientific knowledge, frequently in connection with the re-entry of women into the labour force. By the end of 1994, a total of 5,000 individuals were attending one or more continuing university study courses. Continuing study services have been established in all the cantonal higher colleges.

696. In addition to this return to studies, which essentially involves a change in vocational direction, adult training may also be directed towards further vocational training. This may take the form of studies following the initial course of training, undertaken alongside an occupational activity or alternating therewith. The private sector and, in particular, the professional associations play an important part in further vocational training. This training path is governed by the Vocational Training Act, which defines the different options, examined in detail with reference to further vocational training (see below). Further vocational training may also take the form of in-service refresher courses to update knowledge or to improve employment mobility. The courses or seminars may be held within the enterprise (50 per cent of courses followed for vocational purposes) or by the professional associations.

697. Adult education may also be offered in the form of general courses or courses designed to promote personal development. Such courses are mainly provided by private agencies (enterprises, cooperatives,

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[139] *Abendgymnasium*, Basel (established in 1931); *Collège du soir*, Geneva (1962); *Maturitätsschule für Erwachsene*, Zurich (1963); *Ostschweizerische Maturitätsschule für Erwachsene*, Eastern Switzerland (1990), *Aargauerische Maturitätsschule für Erwachsene*, Aargau (1992).

foundations, professional or other associations, private colleges, etc.). People's universities exist in many cantons. Furthermore, each of the eight cantonal universities also has a university for mature students; these do not award diplomas but offer a wide variety of courses. The Swiss Adult Education Federation embraces 30 organizations, some of them being the main, central organizations.

698. According to a survey conducted by the Federal Statistical Office, between April 1992 and April 1993, around two million people attended more than three million courses, half of them exclusively for vocational purposes. One course in six (18 per cent) was a language course, 13 per cent of courses dealt with data processing and 13 per cent with arts and crafts.

699. Mention should also be made of illiteracy in Switzerland. This problem is perceived as being relatively recent and so far there has been no detailed study of the specific situation of illiterate persons. The most generally accepted estimate puts the figure of functional illiterates throughout the country at between 20,000 and 30,000. These figures refer only to adult Swiss who have completed their schooling but have failed to learn to read and write. It is generally acknowledged that the problem of functional illiteracy is more serious among the foreign population, particularly among women, but there are no detailed statistics. In several cantons, literacy programmes have been established by private associations with the support of the public authorities. It should also be mentioned that the Federal Commission for Aliens' Problems has, since 1978, circulated a national list of training courses for foreign workers. Moreover, since 1986 it has had an annual credit for promoting pilot projects for the education of foreign adults.

H. Public spending on education

700. In 1989 public spending on education rose to 14.56 billion francs, which represents 5 per cent of the GDP and approximately 19 per cent of total public spending (Confederation, cantons and communes).

701. At the inter-cantonal level, 14 cantons allocated an annual average (1986, 1987, 1988) of over 5 per cent of their cantonal revenue to education and research, while two cantons were below the 4 per cent mark. In 19 cantons, spending by the cantons and communes on education and research represents over 20 per cent of total public spending. The differences between the cantons, however, are very large, with the percentages varying between 16.9 per cent and 28.1 per cent of public spending.

702. Education funding in Switzerland precisely follows the pattern of distribution of institutional competences. Thus, each level bears autonomously the financial burden corresponding to its responsibilities. Since compulsory schooling is provided free of charge, it is funded primarily by the communes (58 per cent) and the cantons. At the secondary II level, the cantons meet most of the costs. Higher education is financed in equal parts by the cantons and the Confederation. In 1989, the costs of the entire educational system (including the universities) were divided up as follows: communes 34 per cent, cantons 54 per cent, and Confederation 12 per cent.

703. The distribution of expenditure according to level of education is as follows: 43.2 per cent on compulsory schooling, 12.5 per cent on secondary schools, 14.5 per cent on vocational training and 17.7 per cent on universities; the remaining 2.1 per cent are not for distribution by level. In 1988, the Confederation, the cantons and the communes allocated 10 per cent of their total education expenditure to capital investment (purchases of buildings and land, the acquisition of machines and undertaking of works in connection with buildings, etc.). Among the operating expenses of the government authorities, teachers' salaries constitute the largest budgetary item for the cantons and communes (around 54 per cent of public spending on education).

Table 35. Public spending on education in 1991

Level of education	Spending in millions of francs				
	Total		Institutions		
	As a figure	As a %	Confederation	Cantons	Communes
Pre-school	630.9	3.5	22.6	3,970.7	5,601.5
Compulsory school	8,963.9	49.5			
Vocational training	2,680.2	14.8	441.5	1,761.2	477.5
Teacher training	378.4	2.1	-	367.4	11.0
General training college	1,390.1	7.7	10.8	1,299.7	70.6
Higher vocational training	427.6	2.4	92.4	316.4	18.8
University-level higher colleges	3,280.8	18.1	1,677.6		1.9
Miscellaneous	354.2	2.0	10.1	301.1	43.0
Total	18,106.1	100.0	2,178.7	9,694.1	6,233.3
Including salaries	12,002.9	66.3	-	-	-
Teachers' salaries only	9,716.1	53.7			

Source: Federal Administration of Finance, Federal Statistical Office.

I. Equality of access to education

1. Equality between men and women

704. Women's access to training is an essential factor in the realization of other aspects of equality. Article 4, paragraph 2, of the Constitution specifies expressly that legislation should provide for equality in educational fields. Overall, women's access to training has improved appreciably, although the disparities between men and women have not totally disappeared.

705. With regard to compulsory schooling, almost all boys and girls continue their education up to the age of 15 years. The principle of equality has led to the standardization of educational programmes. Generally speaking, girls come out better in the selection process: they are less numerous than boys in the special-needs classes (composed of 61.8 per cent boys as against 38.2 per cent girls) and do not have to repeat classes as frequently (39 per cent of children repeating classes are boys). After compulsory schooling, however, fewer girls than boys go on to undertake training: in 1992, 22 per cent of girls aged 20 years had no post-compulsory training as compared with 17 per cent of boys. Women's access to post-compulsory training has, however, improved and they have caught up with men by comparison with previous generations: over one half of women aged 65 years have no post-compulsory training.

706. Disparities between men and women are evident with regard to the choice of secondary II training. Only 60 per cent of women in a given age class opt to pursue vocational training as opposed to 73 per cent of boys. The proportion of women in vocational training has, however, increased steadily. Girls tend to choose short vocational training courses (from one to three years), principally in commerce and administration or health care. The same proportion of men and women (14 per cent) attend schools in order to obtain their general certificate of secondary education and 48.7 per cent of such certificates are awarded to women. The proportion of women

and men whose highest qualification is at the secondary II level is identical (57 per cent). However, as many men as women undertake tertiary study.

707. Women's access to higher education has also improved considerably. The student population at tertiary level is now composed on average of 40.7 per cent women, but there are wide variations among the seven cantonal universities, with women representing 54.3 per cent of students in Geneva as compared with 40.4 per cent in Bern. Women are underrepresented in the federal polytechnic colleges (16.8 per cent at Lausanne and 20.4 per cent at Zurich). More female than male students drop out of tertiary education (32 per cent of women compared with 24 per cent of men). In 1993, 36.9 per cent of Bachelor's and Master's degrees and 25.8 per cent of doctorates were awarded to women.

708. Women are also underrepresented in non-university higher education. Only one woman in ten enters such education, whereas for men the figure is 34 per cent. Furthermore, the difference in the choice of course is especially striking: whereas the proportion of women attending technical college is only 3 per cent, the same figure is 63 per cent in the case of the social colleges.

709. The proportion of women in the teaching profession is very clearly a function of the level of education in question: the higher the level, the smaller the proportion of female teachers. Thus, women account for 50 per cent of primary school teachers, 32 per cent of secondary teachers, 15 per cent of university part-time lecturers and a mere 3.6 per cent of university chairs. This situation has led to the adoption of a federal decree concerning special measures to promote continuing training at university level. This decree provides for the granting of extraordinary subsidies with a view to achieving an appreciable increase in the proportion of women in the teaching profession so that at least one third of posts funded by the Confederation are occupied by women. In practice, this share has been exceeded, since 40 per cent of posts funded by the Confederation under the programme to promote university education have been granted to women.

Table 36. Pupils and students according to level of education, in 1993-1994

Level	Total	Including women (%)	Including foreigners (%)	Attending a private school (%)
Pre-school	149,250	48.6	22.2	5.4
Compulsory school	751,974	48.7	21.0	3.0
Primary level	423,399	49.2	20.1	2.2
Secondary I level	287,243	49.4	19.1	4.4
Schools with special educational programmes	41,332	38.2	44.3	1.1
Secondary II level	278,207	45.9	16.9	5.9
Gymnasiums	59,168	50.1	13.3	8.5
Teacher training college	9,474	79.4	2.7	1.3
Diploma college	9,599	76.2	17.0	9.7
Other general training colleges	5,569	58.8	21.6	24.9
Vocational training	191,344	41.2	18.2	4.7
Vocational certificate of education	230	6.5	8.3	-
Basic training	2,823	38.4	43.2	1.5

Level	Total	Including women (%)	Including foreigners (%)	Attending a private school (%)
Tertiary level	148,664	36.7	17.0	8.4
University	91,037	40.7	20.0	0.0
Higher college	16,419	17.7	9.9	0.4
Technical college	5,475	3.6	10.7	19.9
Preparation for the higher vocational examination or vocational examination	17,762	24.4	9.1	26.8
Other type of education	17,971	56.4	18.0	36.8
Undefined	6,703	51.7	88.2	98.9
Total	1,334,798	46.8	20.2	4.9

Source: Federal Statistical Office.

2. Vulnerable population groups

(a) Children of foreign origin

710. Switzerland has a large number of migrant workers: in 1993, 18.5 per cent of the population were of foreign origin; the traditional Southern European countries (Italy, Spain, Portugal and ex-Yugoslavia) still form the largest group, although the number of countries of origin is increasing. This situation has had its effect on the composition of classes. In 1993/94, the proportion of pupils of foreign origin increased to 20.2 per cent, a figure which does, however, embrace a wide variety of individual situations. It encompasses "second generation" children born in Switzerland, the children of recent immigrants, and also students who have come to Switzerland for a specifically educational purpose. The situation in the different cantons is likewise extremely varied with, for example, a rate of 40 per cent foreign pupils in the canton of Geneva and 5 per cent in the Canton of Uri.

711. In general terms, cultural diversity is more pronounced in French-speaking Switzerland than in German-speaking Switzerland. For instance, the proportion of classes containing a large number of pupils from a different culture varies from 77 per cent in the canton of Geneva to 2 per cent in the canton of Obwalden. In Switzerland as a whole, one third of classes at the compulsory-school level contain a large number of children from other language or national cultures and one fifth of classes contain only Swiss children whose language of education is their mother tongue.

712. Mention should be made here of the problem of the compulsory schooling of "clandestine children", a problem which is connected with the status of seasonal workers whose families are not legally permitted to join them (cf. comments on art. 6). There are families living in Switzerland illegally whose children do not, in some cases, go to school at all. The Federal Council has issued an instruction in a circular to the cantonal aliens police authorities to the effect that favourable consideration should be given to children residing illegally in Switzerland whose parents might soon be granted the right to family reunification as a result of the conversion of their seasonal permit into a yearly permit of sojourn. The cantonal authorities have the option, at least in these cases, of granting a permit of sojourn for such children on humanitarian grounds. In reality, it is therefore the fundamental right to education that is applied even where there may be a conflict with federal legislation on the sojourn and establishment of aliens.

713. When they have completed primary education and are moving on to a secondary I school, there are distinctly more children of foreign origin entering the low-requirement classes. For instance, during the academic year 1992/93, while the total proportion of foreigners in secondary I education was 16 per cent, this figure was 26 per cent in the low-requirement classes, 11 per cent in the extended-requirement classes and 16 per cent in those not subject to selection (this latter type accounts for a considerable proportion of pupils, especially in Ticino and other French-speaking cantons). At the same time, young foreigners are overrepresented in the special-needs classes; in 1993/94, they constituted 44.3 per cent of pupils in such classes.

714. As regards post-compulsory education, young foreigners represent 13.3 per cent of pupils entering a school providing preparation for the general certificate of secondary education and 18.2 per cent of young people in vocational training. They are overrepresented, however, in basic vocational training courses, where they account for 43.2 per cent of the participating students.

715. A large proportion (20 per cent) of university students are of foreign origin. There are fewer such students in non-university higher education (10 per cent). However, many of these students come to Switzerland with the specific purpose of obtaining an education. Two thirds of foreign students are what is termed "mobile" students, while one third have grown up in Switzerland. Each year the Confederation awards hundreds of grants to foreign students. These are shared equally among the students from industrialized countries, who receive one-year grants on a reciprocal basis, and students from developing countries, who may receive a grant for the entire length of their studies.

716. The two key concepts underlying the education of children of immigrants are integration and respect for the culture of origin.[140] To achieve these objectives, most cantons have adopted various measures of benefit to children of foreign origin. Some have established reception classes aimed at young adolescents when they arrive in Switzerland. These classes represent a transitional stage, allowing them subsequently to enter the normal school system. Other cantons place young foreigners in especially small classes making for better integration. Remedial courses, courses providing teaching one to one or in small groups and courses in the local language are also organized outside ordinary school hours. In addition, courses in the language and culture of origin are generally organized by private associations sponsored by the authorities of the country of origin. These courses enable the child to establish his own cultural identity by achieving integration within the host society without renouncing his culture of origin.

(b) Disabled children

717. In Switzerland, the education of disabled children is conceived as belonging within the framework of specialized education based on a special form of pedagogics, namely curative pedagogics. The 1959 Disability Insurance Act has had a considerable impact on specialized education by providing for the funding of the school education of disabled children.

718. At the pre-school level, the early specialized education of disabled children essentially involves the application of measures which are partly educational and partly therapeutic, either at the child's home or on the premises of an independent or multifunctional service, or else in a service within a specialized school, in a home or in a clinic.

719. Within the compulsory school system, there are essentially two institutional frameworks that provide specialized education:

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[140] Cf. the recommendations adopted by the CDIP on 24 October 1991.

(a) Specialized education (special-needs) classes within State schools;

(b) Special schools recognized by the disability insurance authorities.

720. The special-needs classes are essentially intended for children with learning difficulties or behavioural problems. In the main, they consist of introductory classes (the first-year programme spread over two years), development classes, smaller classes for children with learning difficulties, classes for children with language-related problems and classes for physically handicapped children.

721. The specialized schools are independent establishments which provide for the education, either residential or non-residential, of physically or mentally disabled children. They are financed totally or partially by disability insurance and their legal status may derive either from the cantons or from private associations or foundations. All the cantons have establishments for mentally handicapped children and adolescents. Throughout Switzerland, there are also special schools funded by disability insurance for pupils with behavioural problems, physically disabled pupils and pupils with language difficulties.

722. As a supplement to the instruction provided in special classes or special schools subsidized by disability insurance, the medico-pedagogical services also offer a range of facilities such as logopaedia, psychomotor education and re-education, and educational psychology services.

723. A move towards integrating specialized education within the State schools has been gathering momentum for a number of years, especially in French-speaking Switzerland. Special classes for children with problems are increasingly being accommodated in the same building as the ordinary private schools. Efforts are also being made in a number of cantons to integrate physically or mentally disabled children. Widely diverse experience has been gained, both with regard to individual integration whereby children with sensory impairments or mental disabilities are integrated in ordinary primary classes, and with regard to collective integration, i.e. the physical accommodation of special-needs classes in ordinary primary-school buildings with certain specific activities being undertaken together with the non-disabled pupils. These integration efforts vary widely according to the canton. For want of legal competence, it is not possible to introduce national legislation to promote integration, although in 1985 the CDIP published recommendations regarding the integration of disabled children.

724. At the post-compulsory level, young disabled persons have the possibility, under the law, to pursue vocational training. Regional vocational rehabilitation offices have been set up under the disability insurance system to provide young people with guidance in their career choices. The Vocational Training Act entitles them to take advantage of various facilities during training or to take exams upon completion of their apprenticeship. There are also special vocational colleges for apprentices with sensory impairments. Young mentally disabled persons may, depending on the degree of their infirmity, pursue initial vocational training pursuant to the Disability Act or else basic vocational training, as provided for by the Vocational Training Act. In addition, there also exist sheltered workshops in certain enterprises, the purpose of which is to enable disabled persons to benefit from vocational training.

(c) Religious minorities

725. Under article 27, paragraph 3, of the Federal Constitution, persons of all confessions are entitled to be admitted to State schools and to attend such schools without prejudice to their freedom of conscience and belief.

726. This provision thus embodies the principle of the free access of religious minorities to State schools, without, however, regulating the question of a possible conflict between the principle of compulsory schooling

and certain religious prescriptions which require exceptions to be made to this principle. The issue is therefore dealt with by the cantonal authorities and, in the final instance, by the Federal Tribunal.

727. Initially, the Federal Tribunal found that the cantons were not obliged to dispense the children of certain religious communities from the obligation to attend Saturday school.[141] Such dispensations are authorized, however, by many of the cantons. The Federal Tribunal is now focusing on the principle of proportionality. It rejected a refusal to grant dispensation from Saturday morning classes requested by some parents for their Baptist son on the grounds that the cantonal Administrative Tribunal had not considered whether such refusal was compatible with the principle of proportionality.[142] Similarly, it allowed an appeal lodged by the father of a Muslim girl whom the authorities had refused to grant a dispensation to excuse her from swimming lessons.[143] For the Federal Tribunal it is a matter of balancing the public interest represented by compulsory school attendance with the private interest of respect for freedom of belief. The taking into account of particular religious prescriptions, whether those of traditional religions or other beliefs, has in any case to be subject to the constraint of what is necessary to maintain orderly and effective school education.[144]

3. Awarding of grants

728. Under article 27 *quater* of the Federal Constitution, the awarding of grants is a matter of cantonal sovereignty. Each canton, therefore, has total discretion to determine the conditions governing the allocation of grants, their amounts and the procedures involved. The average amounts per beneficiary vary considerably from one canton to the next; for example, from 2,816 francs in the canton of Neuchâtel to 7,654 francs in the canton of Geneva in 1994. The proportion of persons eligible for grants is also very variable: one sixth of persons undergoing post-compulsory training in the cantons of Jura and Ticino as against less than 5 per cent in the cantons of Schaffhausen, Aargau, Glarus and Nidwalden. The cantons also award training loans; in 1989 it awarded 30 million francs' worth of such loans to a total of 6,500 persons.

729. In 1989, the cantons spent 200 million francs on study grants. The largest proportion (18 per cent) went to persons pursuing non-university training, followed by persons in the university sector (15 per cent). Only 9 per cent of pupils in secondary II education received a grant. Practically no grants were allocated at the compulsory-schooling level. The average amount of grants was 4,000 francs.

730. The Confederation has competence to award subsidies to the cantons towards their expenditure on grants, such federal subsidies covering approximately 40 per cent of cantonal spending in this area.

4. Language-related provisions

731. Switzerland is a multilingual State with four national languages (art. 116 of the Constitution). French, German and Italian are the official languages. In 1990 the total resident population was divided linguistically as follows: 63.6 per cent German speakers, 19.2 per cent French speakers, 7.6 per cent Italian speakers and 0.6 per cent speakers of Rhaeto-Romansch. These languages are traditionally distributed among four linguistic territories. Each canton determines its official language or languages, three cantons being bilingual and the

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[141] ATF 66 Ia 157.

[142] ATF 119 Ia 178.

[143] ATF 114 Ia 133 c.3a; ATF 117 Ia 311.

[144] ATF 100 Ia 465.

canton of Graubünden trilingual. In this last canton the communes have total freedom to determine their official language. This territorial distribution of national languages has the effect of relativizing the concept of "minority language": a majority language at the federal level may be a minority language at the cantonal level (in the case of German cantons of Valais and Fribourg). The picture is further complicated by the 8.9 per cent foreigners whose mother tongue is different from the four national languages.

732. Education is subject to the principle of linguistic territoriality whereby the language of instruction is the language of the commune in which the school is located. The idea underlying this principle is to protect the cantons' linguistic homogeneity through the linguistic integration of migrants. Consequently, parents who speak a different national language may not assert any right to education in a language other than that of the commune. Furthermore, the commune of domicile is not obliged to pay compensation for attendance of a school in a neighbouring commune which provides instruction in the mother tongue.[145] As regards Rhaeto-Romansch, a number of primary schools provide instruction in this language, but at the secondary level it is generally taught as a foreign language.

733. A second national language (German in French-speaking Switzerland and, as a rule, French in German-speaking Switzerland and Ticino) is taught from the fourth or fifth grade of compulsory schooling. With regard to the teaching of a second foreign language, pupils may choose between a second national language or English. Experiments with bilingual classes have recently been undertaken in Fribourg, in the towns of Sierre and Bienne, with the establishment of classes leading to a bilingual certificate in secondary education (French/German). In addition, there are private schools which also provide a bilingual education.

J. Position of teaching personnel

734. The training required for teachers, their working conditions (salary, number of hours of teaching, etc.) and their status (appointed, non-appointed, supply teacher, etc.) are matters for which the cantons, and in some cases the communes, have competence. A teacher's position may therefore differ greatly from one canton to the next, and the same applies to salary levels.

735. There are no federal statistics currently available regarding teachers' salaries. It can, however, be stated that Switzerland spends on average over 53 per cent of its public spending on education on the remuneration of teachers (cf. table 34). Generally speaking, teachers at all levels are relatively well-paid.

K. Freedom of parents to choose their children's school and right to establish private schools

736. Parents have the option of having their children educated in a private school. Admission depends, however, on the school itself. Some private schools are subsidized by the canton or by the Confederation.

737. The right to set up private schools derives from freedom of trade and industry, as guaranteed by article 31 of the Federation Constitution. Private schools are required to fulfil certain minimum conditions in order to provide an adequate education within the meaning of article 27, paragraph 2, of the Federal Constitution. Private schools are placed under the supervision of the cantons, which are responsible for granting operating licences and also perform actual supervisory activities.

738. At the primary level, article 27 of the Federal Constitution provides that primary education is to be administered by the public sector, and this principle is adopted in general terms by the cantons for compulsory schooling in its entirety. There are nevertheless private schools at this level, but very few are subsidized.

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[145] ATF 100 Ia 465.

739. Secondary II schools are normally run by the cantons, but occasionally by the communes. However, private schools at this level (in the past, usually denominational) are in many instances recognized and even subsidized. Most vocational colleges are run by the cantons, while general and vocational continuing training are largely dependent on the private sector (professional associations, profit-making institutions), while also receiving both federal and cantonal subsidies.

740. For the percentages of pupils attending private schools in 1993/94, see table 36.

XIV. ARTICLE 14: COMPULSORY AND FREE PRIMARY EDUCATION

741. As explained above, compulsory schooling was introduced in all cantons in 1850 and this principle was embodied in the Federal Constitution of 1874. Article 27, paragraph 2, of the Federal Constitution lays down that "the cantons shall provide for primary instruction which must be adequate and placed under the sole direction of the civil authority. It is compulsory and, in State schools, free of charge". Compulsory and free school education is provided not only at the primary level but also the secondary I level and extends over a period of nine years from 6 to 15 years of age. The school attendance rate of girls and boys during compulsory schooling averages 99 per cent.

XV. ARTICLE 15: THE RIGHT TO CULTURE

A. Principal instruments applicable

742. The following are the principal instruments applicable:

(a) International instruments:

International Covenant on Economic, Social and Cultural Rights, article 19;

European Convention on Human Rights, article 10;

(b) National instruments:

(i) Culture:

Federal Constitution, articles 24 *sexies*, 27 *ter*, 55 and 55 *bis*;

Loi fédérale concernant la création d'un musée national suisse (Federal Act concerning the creation of a Swiss national museum), dated 27 June 1890;

Loi fédérale sur le cinéma (Federal Act on the cinema), dated 28 September 1962;

Loi fédérale concernant la Fondation Pro Helvetia (Federal Act concerning the Pro Helvetia Foundation), dated 17 December 1965;

Loi fédérale sur la protection de la nature et du paysage (Federal Act on the protection of nature and the countryside), dated 1 July 1966;

Loi fédérale sur les subventions aux cantons des Grisons et du Tessin pour la sauvegarde de leur culture et leurs langues (Federal Act on subsidies for the cantons of Graubünden and Ticino for the preservation of their culture and languages), dated 24 June 1983;

Loi fédérale sur la radio et la télévision (Federal Act on radio and television), dated 21 June 1991;

Loi fédérale sur la Bibliothèque nationale suisse (Federal Act on the Swiss National Library), dated 18 December 1992;

Arrêté fédéral concernant l'encouragement de la conservation des monuments historiques (Federal Decree concerning promotion of the conservation of historical monuments), dated 14 March 1958;

Règlement pour les archives fédérales (Regulations for federal archives), dated 15 July 1966;

Ordonnance sur le cinéma (Order on the cinema), dated 24 June 1992;

(ii) Science:

Federal Constitution, article 27 *sexies*;

Loi fédérale sur la recherche (Federal Act on research), dated 7 October 1983.

B. Right to take part in cultural life

1. General

743. In the Swiss federal system, culture is a matter of cantonal competence. The Constitution does not contain any general provision governing the activity of the Confederation in this sphere. It does, however, deal with various specific areas of culture. For instance, under article 27 *ter* of the Federal Constitution, "the Confederation had the right to legislate in order to encourage Swiss cinematographic production and cultural activities undertaken in the realm of the cinema". Pursuant to article 24 *sexies* of the Constitution, the protection of nature and the countryside falls within cantonal competence, the Confederation having the possibility of supporting cantonal efforts through subsidies. The Constitution also contains an article protecting freedom of the press (art. 55). Lastly, article 55 *bis* of the Constitution assigns competences regarding radio and television to the Confederation.

744. The Confederation none the less performs many different functions in the realm of culture on the basis of an unwritten competence whereby it is authorized to take over tasks which can only be discharged at the federal level. A need has been perceived, however, for a clear constitutional basis. An initiative to include a new constitutional article on culture nevertheless met with failure in two popular votes. In 1986, a popular initiative "in support of culture" and a counterproposal submitted by the Federal Assembly were rejected by both the people and the cantons. The draft put to the vote in June 1994 envisaged giving the Confederation competence to promote cultural life in Switzerland and to facilitate cultural exchange with other countries while respecting cantonal competence. A small majority of the people voted for the draft, but it was not possible to win majority support among the cantons.

2. Public spending on culture

745. A study carried out in 1992 on the promotion of culture, commissioned by the Federal Statistical Office and the Federal Office of Culture, yielded solid information on the share of public spending allocated to culture in 1989 and 1990[146] In 1989, spending by the public authorities on cultural promotion amounted to 1.5 billion Swiss francs. The way such expenditure is divided up among the different authorities is a function of the principle of subsidiarity. Thus, over half of the costs (53 per cent) are borne by the communes, the political authority closest to the citizen. The cantons' share amounts to 38 per cent, with heavy expenditure on the item "protection of natural assets and the countryside". The Confederation plays a subsidiary role, intervening with regard to tasks of national scope and foreign relations. Its contribution, which is no greater than 9 per cent, is essentially directed towards protecting cultural property and other spending on culture. This latter category includes, in particular, subsidies for the Pro Helvetia Foundation[147] (21 million francs) and the promotion of cinematographic production (10 million francs).

746. At the level of the cantons and the communes, 60 per cent of public spending on culture is provided by the cantons of Basel-Town, Zurich, Bern, Vaud and Geneva, cantons whose administrative centres are also cultural centres in which the major cultural institutions are located. The five cities of Basel, Zurich, Bern, Geneva and Lausanne, for instance, account for over half of cultural spending by the communes. In these communes, as in other major towns and cities, theatres and concert halls absorb over half of cultural subsidies.

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[146] *Promotion publique et privée de la culture* (Public and private promotion of culture), Federal Statistical Office and Federal Office of Culture, Bern, 1992.

[147] See below for further details concerning the Pro Helvetia Foundation and its competences.

Table 37. Public spending on culture in 1992

	Communes	Cantons	Confederation	Total
Libraries	100,713	89,478	14,145	204,336
Museums	125,314	108,694	32,961	266,969
Theatres, concert halls	270,316	214,347	-	484,663
Protection of the cultural heritage	35,196	150,446	50,697	236,339
Mass media	24,669	2,904	-	27,573
Other cultural undertakings	255,069	77,296	93,932	426,297
Total	811,277	643,165	191,735	1,646,177
Per inhabitant	117	93	28	238
As a percentage of total spending by the public authority	2.7	1.8	0.5	1.6

Source: Federal Statistical Office.

747. Spending by private enterprise on culture is estimated at some 250 million Swiss francs per year. The 145 leading Swiss companies spend a total of 100 million francs on promoting culture; around 60 per cent of this expenditure is shared by a small group of only four or five enterprises. Spending by the 1,500 foundations active in cultural affairs is estimated at around 60 million Swiss francs. In total, private-sector spending represents about one sixth of spending on the promotion of culture.

3. Institutional infrastructure

(a) Museums

748. In 1993, Switzerland had 761 museums open to the public, a figure which had tripled since 1950. Thus, Switzerland has one of the highest densities of museums in the world, with one museum per 9,000 inhabitants. Most of the cantons possess a wide variety of museums, but only seven offer the complete range of seven categories (regional museums; museums of archaeology and history; art; natural history; science and technology, and communications; ethnography, anthropology; and others). Museums are mostly located in conurbations with fewer than 10,000 inhabitants, where the majority of regional museums are also situated. The Swiss National Museum, founded in 1890, was established for the purpose of "conserving national antiquities of importance from the point of view of history and the fine arts". The National Museum has its main centre in Zurich, together with a number of subsidiary collections.

(b) Libraries

749. There are over 6,000 libraries in Switzerland. The largest collections are housed in university libraries, which generally double up as cantonal or municipal libraries. The Confederation also supports the Library for All (BPT), which is a "library for libraries" in that it lends books to other libraries in order to reduce their purchasing costs. In addition, the Federal Office of Culture is furnished with various credits allowing it to provide support for literature for young people, book exhibitions abroad and writers' associations.

750. The National Library occupies a special place in this general system. Its main interest lies with "Helvetica" or Swiss writings, and its mandate covers the entire spectrum of facilities. In other words, it collects, conserves and makes available to the public:

(a) Modern and older works and printed materials, in all languages, dealing with Switzerland and its inhabitants;

(b) The works of Swiss authors in the original language and in translation;

(c) Books or other types of medium published in Switzerland.

The National Library also administers the Swiss Literary Archives, which were founded in 1990 at the request of Friedrich Dürrenmatt. These are the personal archives of Swiss nationals or persons associated with Switzerland whose work has importance for the country's cultural and intellectual life.

Table 38. The principal libraries in Switzerland, in 1992

Libraries	Collections[1]	Acquisitions	Registered readers	Loans[2]
National Library	2,989 577	57,378	7,534	98,258
Basel University Library	2,805 764	37,807	24,410	243,329
Bern Municipal and University Library	1,754 069	25,095	19,813	158,539
Fribourg Cantonal and University Library	1,825 335	36,181	9,800	112,549
Geneva Public and University Library	1,933 536	20,011	9,654	93,157
Geneva University Library	1,911 885	116,551	17,312	-
Lausanne Cantonal and University Library	1,636 284	38,547	16,949	246,328
EPFZ Library	4,835 140	128,243	67,178	712,407
Zurich Central Library	3,371 300	88,760	55,000	294,237

Source: Official Statistical Office.

[1] Books, periodicals, manuscripts, microcopies, visual documentary records and sound recordings.

[2] Number of volumes loaned and replacement copies; including audiovisual materials and visual documentary records; including loans to other libraries.

(c) Cinema

751. The cinema represents one of the rare domains of cultural life specifically mentioned in the Constitution. Article 27 *ter* of the Constitution provides for encouragement of the Swiss cinema by the Confederation. Such encouragement, whose aim is purely cultural, finds expression mainly in the form of subsidies for Swiss film production and its promotion and archival storage. The cinema section of the Federal Office of Culture is responsible for granting such subsidies.

752. Television may also have an important role to play in the promotion of Swiss film-making. The Federal Act on radio broadcasting, for example, stipulates that the Swiss Radio Broadcasting Corporation (SSR) should give preference to Swiss cinema (art. 3, para. 1 (e), and art. 26, para. 3, LRTV). In the allocation of television broadcasting concessions, the Confederation is at liberty to stipulate that a proportion of programmes should be reserved for Swiss productions, most specifically those of the Swiss cinema (art. 21, para. 2 (d), LRTV). Furthermore, a percentage of television revenue has to be reinvested in Swiss production or for the benefit of Swiss cinema (for example, Teleclub allocates part of its revenue to the Swiss Cinema Centre and part to aid for Swiss film-making).

753. In 1994, Switzerland had a total of 431 cinemas (415 in 1993), with 100,724 seats. The five largest cities counted for almost one third of cinemas and seats. In 1994, the commercial cinemas showed 1,176 films, 64 of which were entirely Swiss productions. The total number of cinema tickets bought was 16.2 million, 74 per cent for American films. In 1994, 26 shorts and 37 feature films were produced in Switzerland (14 being co-productions).

(d) Theatre

754. The term "theatre" covers four categories:

(a) Established and regularly subsidized theatres, i.e. the major establishments which generally have their own troupe and repertoire;

(b) Subsidized theatres without their own troupe or productions;

(c) Independent troupes and theatres occasionally granted subsidies by the Government authorities (pocket theatres, children's theatres, puppet theatres);

(d) Unsubsidized theatre troupes.

Swiss theatrical life is therefore no longer confined to the major official stages but has the added dimension of a multitude of small theatres and independent troupes.

755. The theatrical productions staged in the 22 established professional theatres during the 1993/94 season included 2,824 plays, 686 operas, 223 ballets and 364 operettas or musical comedies. The audiences for the same season totalled 1,713,874 theatregoers.

756. As regards opera, only the major cities have an ensemble engaged on a yearly basis. Professional ballet has not become established on any large scale except in Zurich, Basel, Geneva and Lausanne (Béjart Ballet). Independent dance, however, has shown itself to be a flourishing medium.

(e) Exhibitions and festivals

757. Each year Switzerland plays host to numerous international events: the "Art Basel" annual exhibition of contemporary art, the International Book and Press Show in Geneva, the Musical Weeks at Lucerne, the Montreux Jazz Festival, the Locarno Film Festival and the Nyon Documentary Film Festival. There are also smaller events, such as the Literary Days and Film Days at Soleure, the Pocket Theatre Exchange, the Video Days at Lucerne, the Valais Festival of Animated Film and also a large number of rock festivals.

4. Promotion of cultural identity and minorities

758. In Switzerland, cultural and linguistic diversity is the distinguishing feature of the country's national identity. There is no " Swiss culture" as such, and national cohesion necessarily depends on the promotion of such diversity in consonance with the principle of "unity in diversity". In this regard, cantonal sovereignty in cultural matters is the very best guarantee of such diversity.

759. Article 116 of the Constitution guarantees the equality of the four national languages: German, French, Italian and Romansch. According to the 1990 census, the language distribution of the Swiss population is as follows: 63.6 per cent German-speaking, 19.2 per cent French-speaking, 7.6 per cent Italian-speaking and 0.6 per cent Romansch-speaking (39,600 persons). The languages that have lost most ground since the 1980 census are Italian (from 9.8 to 7.6 per cent) and Romansch (from 0.9 to 0.6 per cent). German has also declined in relative importance, and only French is gaining in terms of numbers of speakers.

760. The Rhaeto-Romansch language appears to be under threat of total extinction. The Romansch language is confined to a small territory which is not extended by any larger cultural space. The region is, moreover, characterized by great linguistic diversity, Romansch being composed of five quite distinct dialects. The creation of a unified written language—"Rumantsch Grischun"—should serve to strengthen the presence of Romansch in daily life, however and to provide a useful instrument for its further development and renewal.

761. The Italian-speaking community in the canton of Ticino should be capable in present-day Switzerland of fulfilling the function of outlying region in relation to both the north (German-speaking region) and the south (Italy). Identical factors are crucial in this connection: the inhabitants of Ticino have a strong sense of belonging to Switzerland politically, administratively and culturally. At the same time, they are also in favour of maintaining close relations with their southern neighbour, with which they share a language and a culture, a factor that could help strengthen the cultural distinctness of Italian-speaking Switzerland. However, there is also a sense of identity centred on Ticino itself, according to which it is important to establish what distinguishes the region both from Italy and from the rest of Switzerland. Language plays a crucial role in this entire complex of issues as a formative factor in the consolidation of a sense of identity. The canton of Ticino is therefore called on to perform a linguistic and cultural mission at the cantonal level and simultaneously at the national level.

762. A working group set up by the Federal Department of the Interior has explored the problem of quadrilingualism in Switzerland[148] and has put forward some proposals aimed at amending article 116 of the Federal Constitution. The draft revision was adopted by Parliament and put to a popular vote.[149] The aim of the revision, specifically, is to strengthen the position of linguistic minorities and improve communication among the different cultural and linguistic regions. The draft revision of the constitutional article on languages assigns to the Confederation and the cantons the mission of adopting joint measures to safeguard quadrilingualism.

763. The Confederation grants annual subsidies to the cantons of Graubünden and Ticino for the purpose of preserving the cultural and linguistic identity of the Rhaeto-Romansch and Italian-speaking regions of the country. Accordingly, it grants a total of 3,750,000 francs to the canton of Graubünden and 2.5 million to Ticino. A portion of the funds allocated to Graubünden is required to be paid to the cultural associations "Lia Rumantscha" and "Pro Grigioni Italiano". The Federal Council, in its message of 1 March 1995, proposed a new bill for the preservation and promotion of Romansch and Italian language and culture. It will allow the

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[148] *Quadrilinguisme au Suisse—Présent et futur* (Quadrilingualism in Switzerland—present and future), Bern, 1992.

Confederation and the cantons greater flexibility in providing support for minority languages and, in particular, increased financial aid to support the Rhaeto-Romansch community, without the level of the subsidies granted being established and without the beneficiary organizations being designated by name. In addition, it renders the granting of federal subsidies contingent upon an appropriate contribution by the cantons.

764. As public services, television and radio are also called upon to safeguard the principle of unity in diversity. The *Société suisse de radiodiffusion* (SSR) (Swiss Broadcasting Corporation) is divided into three regional companies: (*Télévision suisse alémanique* (DRS) (German-speaking Swiss Television); *Télévision suisse romande* (TSR) (French-speaking Swiss Television); and *Télévision suisse italienne* (TSI) (Italian-speaking Swiss Television)), in which the four linguistic regions are duly represented. The SSR thus provides a schedule of programmes for each of these three language regions. It is also required to present regular broadcasts for the Rhaeto-Romansch community. These programmes, tailored to the different regional characteristics, are intended to help strengthen national cohesion. Each channel, for example, can be received throughout Switzerland, thus contributing to cultural exchange within the country. A system of internal budgetary adjustment within the SSR ensures adequate financing for the Romansch and Ticino channels, which have low audience ratings.

765. Likewise, the SSR is required, as a radio broadcasting company, to broadcast special radio programmes in each of the national languages. Furthermore, through its directives of 31 August 1994 on the planning of ultrashort-wave broadcasting networks, the Federal Council requires the SSR to broadcast, as far as technically possible, the first regional language programme of the three main regions throughout Swiss territory.

766. The Pro Helvetia Foundation (see below), a public-law foundation wholly financed by the Confederation, also seeks to balance out cultural inequalities among the regions, promote minority cultures and stimulate cultural interchange within Switzerland.

767. The Federal Commission for Aliens' Problems has the mandate of promoting, at the federal level, the social integration of foreigners at the same time as ensuring respect for their cultural identity; practical implementation of its activities, however, is essentially devolved on the local authorities. It has accordingly published a reference work entitled *"Les étrangers dans la commune"* (Foreigners in the commune), edited jointly with the principal municipal and communal associations. The purpose of the manual is to encourage more active involvement on the part of foreigners in Swiss social and cultural life. It also calls upon the communes to assist the numerous aliens' associations which are active locally and regionally in the fields of culture, leisure and social activities, and points out various avenues for collaboration among local and public-sector partners.

768. The CFE also maintains a continuing dialogue with the SSR on the place of immigration in its activities, touching on issues such as the introduction into the SSR concessionary terms of consideration of the problems of aliens in Switzerland, creation of a "community" programme encouraging intercultural integration, the increased openness of the traditional channels towards foreigners, the promotion of new information programmes for minorities in their national language, and improved access to the SSR for foreign journalists and journalists from
immigrant communities.

5. Role of the media

769. The media play a particularly important role in the transmission of culture and are protected by the guarantee of freedom of expression embodied in article 10 of the European Convention on Human Rights

the CEDH does not, however, prevent States from imposing a system of licensing on radio and television broadcasting enterprises.

(a) Television

770. Article 55 *bis*, paragraph 1, of the Constitution assigns to the Confederation the task of legislating in the spheres of radio and television broadcasting. The Federal Act on radio and television of 21 June 1991 gives concrete form to this institutional mandate. In particular, the Act defines the criteria to be applied in granting concessions. The Confederation has a monopoly of radio and television broadcasting and concedes the use of transmitting stations to companies.

771. The SSR has held a public-service concession since 1931. As the national entity entrusted with performing work in the public interest, it is responsible for the radio and television broadcasting service provided to the entire population. It therefore has a communication mission, an integration function and cultural and social tasks. As explained earlier, it is divided into three regional companies, which provide a television channel for each of the language regions, taking account of their diversity.

772. The LRTV also allows concessions to be granted to other broadcasters in accordance with a hierarchical model which assigns special status to the SSR. At the national level and at that of the linguistic regions, other broadcasters are only admitted provided they do not interfere unduly with the SSR in the accomplishment of its complex mandate. This approach offers a means of taking full account of Switzerland's special situation, which is distinguished by a very small market divided into three sectors and confronted by considerable international competition. It would therefore appear justified, in the general interest, that the number of national broadcasters should remain limited. At the local and regional levels, where competition poses less of a threat, several broadcasters may be admitted. At the international level, the law does not impose any restriction whatsoever on broadcasters. At the present time, there are three regional channels, two subscription channels and numerous private channels, which are on the air for no more than a few hours per week. On 1 March 1995, a fourth national channel, Swiss 4, started broadcasting.

773. In addition to the three regional channels—*Télévision Suisse Alémanique* (DRS), *Télévision Suisse Romande* (TSR) and *Télévision Suisse Italienne* (TSI), the foreign channels enjoy undeniable popularity in all the linguistic regions. The 27 private local television stations, however, play a minor role.

774. The Federal Act on radio and television (LRTV) assigns these media the mandate of "promoting Swiss artistic creation and stimulating the involvement of listeners and viewers in cultural life" (art. 3 (c) LRTV). Television is indeed well-placed to contribute to the dissemination of culture since 96 per cent of the resident population over the age of 15 years have at least one television set.

775. On average, the Swiss watch two hours of television per day. The airtime devoted by the different channels to culture varies between 1,274 hours in the case of DRS and 760 hours in the case of TSI. Television as a whole broadcast 34 theatrical productions between September 1992 and June 1993 (TSR 9; DRS 15; and TSI 10), attaining ratings of 304,000 for these programmes. The SSR also broadcast a large number of feature films, in particular Swiss productions.

776. Particular mention should be made of the fact that viewers have the possibility of filing complaints with an independent, quasi-legal authority responsible for monitoring the objectivity and balance of programmes, as well as the proper observance of the concessionary conditions.

Table 39. Television programmes by category and airtime, in 1993

Category of programmes	DRS		TSR		TSI	
	Hours	%	Hours	%	Hours	%
Information, news	1,641	24	1,761	21	1,050	19
Culture[1]	1,274	18	1,244	15	760	12
Films	1,758	26	3,034	36	1,780	27
Sport	965	14	879	11	935	14
Entertainment	455	7	392	5	330	5
Children's programmes	328	5	549	7	284	4
Other programmes	444	6	461	5	1,376	21

Source: Swiss Radio and Television Broadcasting Company.

[1] History, ethnology, arts, theatre, music, education, religion, science and the media.

(b) Radio

777. The SSR has enjoyed a long-standing de facto monopoly in the field of radio broadcasting. An Order issued in 1982 on local radio-broadcasting tests opened the way to the creation of large numbers of private radio stations. A legal basis for their existence is provided by the Federal Act on radio and television, which permits concessions to be granted to other local and regional broadcasters. These radio stations are authorized to broadcast within a range of 30 km.

778. The SSR offers three separate programme schedules in each of the three official languages in order to cater to all its listeners' tastes. The first schedule concentrates on news, entertainment and light music; the second on culture and serious music; and the third is mainly targeted at young people, with a definite bias towards modern music. Generally speaking, the three radio stations devote a good deal of airtime to music, which accounts for two thirds of total SSR air time.

779. Music also forms the bulk of the schedule of the 40 private radio stations in existence in 1993, the primary objective of stations of this type being to provide companionship and entertainment. In terms of airtime, these stations play a secondary role to that of the SSR.

(c) The press

780. Considering its size and population, Switzerland has a rather large number of daily and weekly newspapers. There is no national newspaper as such, the press being essentially cantonal or regional. In 1994, a total of 235 newspapers were available in Switzerland, including 97 dailies (78 in German, 15 in French and 4 in Italian). The total readership of daily newspapers was 2.8 million per day, or in other words, 396 papers per 1,000 inhabitants; eleven daily newspapers have a circulation of over 50,000 and five of over 100,000. Almost half of the Swiss dailies have a circulation of under 10,000. It should also be mentioned that the press is currently undergoing a process of concentration, with various newspapers being amalgamated.

781. Periodicals appearing at least once per quarter include 22 for children and young people, 15 family magazines, 11 women's magazines, 8 general-interest illustrated magazines, 6 periodicals for the older age groups, 5 radio and television magazines and 3 periodicals in the category of humour.

6. Preservation of the heritage

782. A partial revision of the Federal Act on the protection of nature and the countryside was adopted by Parliament on 24 March 1995. The conservation of historical monuments is incorporated in this new law.

783. The conservation of historical monuments continues to lie, in the first instance, within the competence of the cantons, which receive support in the form of funding and expertise from the Confederation. The latter makes contributions towards the restoration, maintenance and operation of monuments, contributions which may cover up to 35 per cent of costs and up to 45 per cent in exceptional cases. It is also entitled to purchase monuments. In addition, the Confederation grants subsidies to associations active in this field and may also subsidize the promotion of research and training. The Federal Council, moreover, is responsible for drawing up an inventory of objects of national significance. In defining this quality, emphasis is placed on the age of the object, its cultural interest and its architectural unity.

784. At the international level, Switzerland is party to several conventions relating to protection of the cultural heritage. Within the Council of Europe, Switzerland acceded to the European Cultural Convention in 1962 and ratified the European Convention on the Protection of the Archeological Heritage in 1970. On 26 April 1995 the Federal Council adopted a message regarding ratification of the Grenada Convention for the Protection of the Architectural Heritage of Europe of 3 October 1985 and the Malta Convention for the Protection of the Archaeological Heritage of 16 January 1992. This last convention will replace the 1969 Council of Europe Convention on the Protection of the Archeological Heritage.

785. Switzerland has also ratified two important UNESCO conventions on the protection of cultural property. These are the Hague Convention for the Protection of Cultural Property in the event of Armed Conflict, ratified in 1962, and the Convention concerning the Protection of the World Cultural and Natural Heritage, ratified in 1975. The old town of Bern and the convents of St. Gallen and Müstair are included in the world heritage list drawn up by UNESCO.

7. Freedom of creation and dissemination

786. At the international level, freedom of artistic creation is protected by the guarantee of freedom of expression enshrined in article 10 of the CEDH[150] and article 19 of the International Covenant on Civil and Political Rights. The latter specifically refers to the medium of art as a form of expression alongside written, printed and oral media.

787. Freedom of artistic creation and of dissemination of the artist's work is protected under the guarantee of freedom of opinion, which is an unwritten basic right recognized by the Federal Tribunal. The latter has found that "the notion of opinion encompasses not only expressions of thought, the adopting of stances, value

[150] Cf. European Court of Human Rights, case of Müller et al. v. Switzerland, decision of 24 May 1988, Series A 133.

judgements conceptions, and so forth, but also artistic creation and its products".[151] Some recent cantonal constitutions guarantee freedom of art in specific terms.[152]

788. In article 55, the Constitution expressly guarantees freedom of the press, which applies to all printed matter (texts and images). Some authors extend the protection afforded by this article to theatrical productions, lectures, and disc and tape recordings. Freedom of the press, as one form of freedom of expression, implies the prohibition of censorship and prior authorization. As to law-enforcement measures, these are legitimate only if the general conditions governing all restrictions on basic rights are fulfilled (i.e. the presence of a legal basis and preponderant public interest, compliance with the proportionality rule).

789. As regards freedom of dissemination, the cinema is in a special position. Unlike the press, it continues to be subject to prior censorship, which is exercised by the cantons. The restrictions concerning young people and allowing age limits to be established are generally regarded as acceptable. Prior censorship of adult films, however, is a particularly controversial issue. In a decree of 1967, the Federal Tribune ruled that it was not contrary to the Constitution to treat the cinema differently from other types of show or entertainment (theatre, cabaret, dance halls) and to subject films to prior censorship. In doing so, the Federal Tribunal viewed the matter purely from the perspective of freedom of trade and industry, disregarding the artistic dimension of film.[153] Since then, however, its case-law has developed in that is has recognized that a non-commercial film presented as a work of art or instruction is to be afforded protection under the guarantee of freedom of opinion. It has not specified clearly, however, whether a commercial art film is also covered by freedom of expression or whether it may be subject to censorship.[154]

790. Article 55 *bis* of the Federal Constitution guarantees the independence of radio and television broadcasting and autonomy in programme planning. The Confederation may not, therefore, exercise these prerogatives itself, but grants concessions to companies.

8. Vocational instruction in the cultural and artistic domain

791. Under article 34 *ter* of the Constitution, the Confederation has competence to legislate on vocational training in certain specific fields only: industry, arts and crafts, agriculture and domestic service. The other fields, in particular instruction in the arts, fall within cantonal competence. Training in the arts is generally provided by full-time vocational colleges. For example, Switzerland has eight conservatories of music with places for 2,530 students.

792. However, the higher colleges of applied art, whose student body numbered 329 in 1992, fall under federal authority. In order to gain admission, candidates must pass an apprenticeship examination as well as an entrance examination. Many students at such colleges, however, come from a general academic background (gymnasium). In connection with the establishment of specialized higher colleges, it is planned to convert these higher colleges of applied art into higher colleges of art.

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[151] ATF 101 Ia 255.

[152] Cf. provisions of the constitutions of cantons of Aargau (para. 14), Jura (art. 8, para. 2 (i)), Uri (art. 12 (i)), Basel-Country (art. 6, para. 2 (e)), Solothurn (art. 14), Glarus (art. 10), Thurgau (para. 6, subpara. 6) and Bern (art. 22).

[153] ATF 93 Ia 309s.

[154] ATF 101 Ia 255.

C. Conservation, development and diffusion of scientific progress

1. General context of the development of science and research

793. Science and research occupy a position of particular importance for Switzerland. In 1992, research and development (R&D) in Switzerland absorbed over 9 billion francs, or 2.7 per cent of GDP, which put Switzerland among the front runners of the OECD countries. The State's contribution, however, is small: the Confederation and the cantons allocated 2.58 billion francs to research. The bulk of the funds committed therefore come from the private sector, which pays three quarters of research funding (6.13 billion francs). For the first time in 1992, private-sector R&D funding from abroad exceeded that in Switzerland. Whereas the Confederation and the cantons concentrate primarily on the financing of fundamental and applied research in the social field, the private sector mainly funds commercially oriented research.

794. The Confederation thus plays a subsidiary but important role in the promotion and development of science and research. Under article 27 *sexies* of the Federal Constitution, it is responsible for encouraging scientific research. The Research Act of 7 October 1983 sets forth the various measures which the Confederation may adopt to this end. The measures enumerated are mainly of a financial nature, but the Act also provides that the Confederation is to establish the objectives of Swiss policy in the field of research.

795. In 1990, the Confederation adopted the "Research Policy Objectives for the Period 1992 to 1995"[155] and defined the priority topics and general objectives of research. The three priority topics are as follows:

(a) Nature: environmental protection;

(b) The human being: study of critical problems in socio-economic and medical sectors;

(c) Technology: promotion of technological development.

For each of these three topics, the objectives set top-priority topics for which a substantial additional commitment is necessary and secondary-priority topics for which the action envisaged is simply to intensify the effort already being deployed. For example, the top-priority topics in the area of the environment are as follows: environmental management methods; climatological, hydrological and geological research; and awareness-raising concerning environmental issues and responsible, environmentally conscious behaviour. The three secondary-priority topics are: clean technologies; energy research; and waste disposal, water treatment and soil preservation.

796. The "Objectives" adopted by the Federal Council also define seven general objectives to be achieved in the actual operation of the research system. These consist in strengthening, improving and promoting:

(a) Collaboration at the national level in the field of R&D;

(b) International scientific collaboration;

(c) Original and innovatory competition and research;

(d) Mobility and flexibility;

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[155] Objectives of Confederation policy in the field of research from 1992 of 28 March 1990 (annexed).

(e) Research embracing a number of different disciplines and involving a comprehensive, integrated approach to problems;

(f) Practical exploitation of the findings of such research and their transfer to interested groups; and

(g) Ethics and shared responsibility in research.

797. Action taken by the Confederation to encourage scientific research essentially takes the form of financing research bodies. The Confederation subsidizes research by financing two federal polytechnic colleges and the institutes attached to them and also by granting subsidies to the cantonal universities. The Confederation also supports research-promotion institutions. The Research Act (LR) designates these institutions by name: the Swiss National Scientific Research Fund and the Academies of Sciences (art. 5 LR). For the 1992-1995 period, contributions paid by the Confederation to these institutions amount to 2.11 billion francs.

798. The Swiss National Scientific Research Fund is a private-law foundation founded in 1952 by the Academies of Sciences and the principal scientific associations. The National Fund has become the Confederation's main instrument for promoting fundamental research at the national level. Its primary mission is to promote high-level research of a non-commercial character across the entire spectrum of disciplines (free research). The National Fund also has two tools for promoting research focused on the priority topics. The first consists in topic-related research programmes for the promotion of research work relating to the priority topics established in accordance with the research policy objectives, and the second in national research programmes whose themes are determined by the Federal Council. The National Fund receives 1.243 billion francs, representing 59 per cent of the research credit for the 1992-1995 period.

799. The second category of institution assigned responsibility for determining scientific research comprises the four Academies of Sciences, which received 86.6 million francs for the 1992-1995 period. These are the Swiss Academy of Natural Sciences, founded in 1815, which encompasses 38 specialized societies and 27 cantonal and regional societies with a combined membership of approximately 25,000; the Swiss Academy of Human Sciences, founded in 1946, comprising 43 scientific societies with a total of 40,000 members; the Swiss Academy of Technical Sciences, established in 1981, embracing 39 societies with a membership of over 47,000; and finally, the Swiss Academy of Medical Sciences, founded in 1943, which is a foundation composed of the seven faculties of medicine and veterinary medicine together with the Federation of Swiss Physicians.

800. The Academies have no direct role as sponsors of research but constitute rather a forum for exchange and deliberation (organization of congresses and scientific events). They provide financial support for specialist journals and may also finance specific studies in the form of either pilot studies or long-term scientific projects.

2. Scientific progress and environmental protection

801. As indicated above, environmental protection is one of the three priority topics set for research objectives. A proportion of 10 to 15 per cent of subsidies received by the National Fund are earmarked for developing research in this area.

802. In connection with special programmes supported by the Confederation, it has been decided to set up a Swiss Environmental Research Centre with the mandate of augmenting knowledge of the environment and promoting collaboration among research units active in a range of disciplines.

3. Dissemination of scientific information

803. The Confederation is required to ensure the dissemination of scientific knowledge and to see to it that research findings are made available as far as possible to all interested persons. The Research Act provides specifically that part of the subsidies allocated to research should be used to that end. Thus, the National Fund is required to contribute to the publication costs of scientific works, while the Academies of Sciences provide financial support for the publication of specialist journals.

4. Scientific research and ethics

804. Although there are no legal prescriptions establishing an ethical framework for the development of research, one of the general objectives set for research policy is that of taking ethical premises into consideration. The Research Act does not contain any provision in this regard since consideration of the implications of research for the individual, society and the environment forms an integral part of the responsibility assumed by the researcher. Furthermore, the scientific community exercises autonomous control over its research activities, most specifically through committees appointed by the Academies of Sciences. For instance, the Committee on Experimental Genetics set up by the Academy of Medical Sciences has drawn up a code of ethics applicable to all genetic engineering operations. It also keeps a register of studies undertaken in this area.

D. Protection of interests deriving from intellectual property

805. The right of any individual to benefit from moral and material interests deriving from any scientific, literary or artistic work of which he is the author is guaranteed under federal legislation on intellectual property.

806. The Federal Act of 9 October 1992 on copyright and neighbouring rights, which entered into force on 1 July 1993, guarantees to the authors of literary and artistic works the enjoyment of pecuniary and moral rights attaching to those works. The Act also protects, under the heading of "neighbouring rights", the performances of performing artists, sound and video recordings produced by record and video producers and recordings by broadcasting agencies. Moreover, it expressly extends copyright protection to software (computer programs). The Act guarantees an extremely high level of protection. For instance, the protection afforded to literary and artistic works consists of the author's lifetime plus an additional 70 years (instead of 50 years); software protection ceases 50 years after the author's death. The performances of persons enjoying neighbouring rights are protected for a period of 50 years. For the benefit of entitled parties, the Act introduces a set of rights to remuneration for mass utilization of their works and performances. These consist in royalties on virgin cassettes used for recording works for private purposes, and remuneration for photocopies, for the hiring of copies of works and for the use of sound and video recordings for the purposes of performance and broadcasting. These new patrimonial rights, whose exercise is subject to mandatory collective management, constitute a major source of additional income for the creators of cultural property. Finally, the Act considerably strengthens law-enforcement measures against piracy (penal and customs measures) as well as the surveillance system operated by the management companies.

807. The Federal Patent Law of 25 June 1954 guarantees to the holder of a patent the exclusive right to use the invention professionally and to the inventor the right to have his or her name indicated. Two partial revisions of this Act were undertaken recently. The first, adopted in December 1994, takes account of the new intellectual-property agreement concluded in connection with the Uruguay Round of GATT (now the World Trade Organization); a number of provisions were revised, in particular those concerning the conditions governing the granting of compulsory licences. The second revision was passed by Parliament in February 1995. Among the amendments made, the most significant was the introduction of additional patents for medicines. The Federal Council also disclosed in 1993 the broad lines of its policy on patents relating to corporate entities.

The elements of this policy are based on the existing legal situation, which already recognizes entities as patentable. Essentially, what is involved is a redefinition of the scope and limitations of patent law: the aim, in particular, is to render non-patentable any inventions whose use would be contrary to human dignity, personal freedom or the dignity of the creature, or which would represent a serious threat to the environment. This flexible approach will replace the present rigid and outdated clause on biotechnology, which excludes some varieties of plant and some animal species from patentability while at the same time allowing a general right to patent protection for plants and animals. The new approach, which will also have to take account of the future development of European law, will make for more flexible solutions to a weighing up, both in the law and in practice, of the different interests at stake.

808. Lastly, the Federal Act of 30 March 1900 on industrial drawings and designs guarantees to the author the exclusive right to derive profit from the industrial use of his creation.

809. The Code of Obligations specifies that inventions created by the worker in pursuit of his activity in the service of his employer and in conformity with his contractual obligations belong to the employer (art. 332, para. 1, CO). Furthermore, the latter may reserve the right to inventions created by the worker in the pursuit of his activity in the employer's service but outside the performance of his contractual obligations (art. 332, para. 2, CO). The employer may therefore use the designs and drawings created by the worker in the exercise of his activities in the service of the employer and in conformity with his contractual obligations (art. 332a CO).

810. At the international level, Switzerland is party to a large number of international conventions administered by the World Intellectual Property Organization (WIPO) in the spheres of industrial property, literary and artistic property and, more recently, neighbouring rights. In addition, Switzerland is party to the 1952 Universal Copyright Convention concluded under the auspices of UNESCO. It has also ratified the agreements resulting from the Uruguay Round, thus becoming a member of the World Trade Organization (WTO) and party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS or ADPIC). Regionally, Switzerland is also party to the 1973 Convention on the Grant of European Patents (European Patent Convention) and to the 1963 Strasbourg Convention on the Unification of Certain Points of Substantive Law on Patents for Invention. Lastly, Switzerland is actively involved in the work being undertaken within the framework of the Committee of Legal Experts in the Media Field within the Council of Europe.

E. Conservation, development and diffusion of culture

811. The Confederation has no subsidiary constitutional competences in the field of culture. It has none the less been very active in this sphere, particularly in the creation of various major cultural institutions. It should be added that it also has a number of credits allowing it to support national cultural associations.

812. In 1890, the Swiss National Museum was founded, followed by the Swiss National Library in 1894. These two institutions seek to protect the Swiss cultural heritage and to make it more widely available.

813. In 1939, the Confederation established the Pro Helvetia Foundation, which has been governed since 1965 by the Federal Act concerning the Pro Helvetia Foundation. It is a public-law foundation exclusively funded by the Confederation and directed by a Foundation Council appointed by the Federal Council. The Foundation is the main agency responsible for culture at the federal level. With its broad autonomy, it has the function of promoting cultural creativity and the dissemination of culture within the country as well as cultural relations with other countries. At the national level, it supports specific projects in all the various artistic and cultural fields and encourages exchange among the different linguistic and cultural communities. Internationally, it was responsible for establishing the Swiss Cultural Centre in Paris in 1985 and opening branch offices in Cairo, Prague, Bratislava, Cracow, Budapest and Pest.

814. For the period 1992-1995, the credit granted by the Confederation to the Pro Helvetia Foundation is distributed over that period as follows:

1992: 28 million francs

1993: 25 million francs

1994: 26 million francs

1995: 26 million francs

In total, funding amounts to 105 million Swiss francs, representing an increase of 22 per cent compared with the preceding period (1988-1991).

815. The Federal Office of Culture, the executive organ for cultural matters of the Federal Department of the Interior, is responsible for coordinating federal cultural policy. It is also concerned with those areas of cultural life that fall directly within federal competence (cinema, fine arts, applied arts, protection of cultural heritage and conservation of historical monuments) and it manages the National Museum and the National Library.

F. Freedom of research

816. Freedom of research is not expressly guaranteed by the Federal Constitution, but legal doctrine and case-law are in agreement that it should be included under freedom of expression in the broad meaning of the term. Freedom of research thus constitutes an individual freedom guaranteed by unwritten constitutional law. It is enshrined in some cantonal constitutions as a basic right[156] and is also expressly guaranteed by article 3 of the Research Act.

817. Freedom of research means that neither the object of research nor the methods used may be restricted by interdictions imposed by the State. However, in the case of research establishments under the authority of the federal Government and institutes attached to polytechnic colleges, the researcher's freedom is safeguarded with respect to the choice and development of the research methods employed but is limited in terms of the goal to be obtained, which is established by the employer.

818. At the international level, freedom of research, like freedom of artistic creation, is protected by the guarantee of freedom of expression embodied in article 10 of the CEDH and article 19 of the International Covenant on Civil and Political Rights.

G. International cooperation in the field of science and culture

1. International cooperation in the field of science

819. Switzerland is actively involved in various international scientific cooperation programmes. Within Europe, such cooperation mainly takes place within the framework of European Community research programmes, the EUREKA initiative and the COST project. In connection with development cooperation, Switzerland makes substantial contributions to the centres and programmes of the Consultative Group for International Agricultural Research (CGIAR), to specific research programmes carried out within the United

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[156] In the cantonal constitutions, see the following provisions: Jura, art. 8 para. 2 (i); Aargau, para. 14 (e); Basel-Country, para. 6, subpara. 2 (i); Solothurn, art. 14; Thurgau, para. 6, subpara. 6; Bern, art. 21.

Nations system, and to sectoral research networks. The field of research, moreover, constitutes one of the seven discussion topics of the first phase of bilateral negotiations with the European Union. With regard to other world programmes, Switzerland participates in the research work of the International Energy Agency, the Japanese initiative Intelligent Manufacturing Systems, and the Human Frontier Science Program. It is also a member of international scientific organizations such as the European Space Agency (ESA) and the European Organization for Nuclear Research (CERN).

820. The Academies of Sciences are also responsible for promoting international cooperation with counterpart institutions abroad. The Swiss Academies of Natural Sciences and of Human Sciences, for example, are planning further expansion of the Swiss Scientific Research Centre involving Côte d'Ivoire. There are also plans to intensify collaboration, especially with Eastern Europe and China. Collaboration with researchers from developing countries takes places through the awarding of fellowships and grants and also through exchanges in connection with seminars, congresses, and the like.

821. Under the Research Act, the Swiss National Fund has a mandate to take part in international scientific cooperation (art. 8 (f) LR). In addition to providing financial support for projects undertaken by Swiss researchers in connection with international collaboration initiatives and in addition, also, to financing grants for young Swiss researchers to enable them to spend periods of time abroad devoted to their research activities, it also encourages international cooperation through specific initiatives. Through its membership, it supports the scientific activities of non-governmental international organizations such as the European Science Foundation (ESF) and the International Foundation for Science (IFS), the purpose of the latter being to assist researchers from developing countries. The National Fund also promotes cooperation with researchers from developing countries under module 7 of the Swiss priority programme entitled "Environment", which is funded and implemented jointly with the Cooperation and Humanitarian Aid Office of the Federal Department of Foreign Affairs. Cooperation with Central and Eastern European countries is a further priority of its international cooperation programme, the aim being to promote the reform of science in those countries. Finally, it maintains a large network of bilateral relations with national scientific organizations in the member countries of the European Union and in the United States, Japan and China, and conducts scientific collaboration and exchange programmes with sister organizations on a basis of reciprocity.

2. International cooperation in the field of culture

822. As a Member State of UNESCO, Switzerland has acceded to the Declaration of the Principles of International Cultural Co-operation of 1966. Switzerland's specific activity within UNESCO is ultimately aimed at enabling the Organization to play a leading role in the development of intellectual cooperation. Switzerland contributes directly, through the regular budget and through additional, extrabudgetary contributions, towards the implementation of programmes focused on the cultural dimension of development and promotion of the diversity of cultural identities and cultural pluralism at the international level. Switzerland is also party to the European Cultural Convention (1954) of the Council of Europe. Thus, it plays an active role on various cultural cooperation committees within this institution. The main areas providing the focus for Switzerland's interests on these committees are the regional and federalist dimension of cultural ventures, along with issues associated with the multicultural society and management of cultural diversity.

823. Finally, mention should be made of the cultural cooperation which is developing within the framework of institutionalized transboundary regions such as the Regio Basilensis, the Lake Constance International Conference and the Regio Insubrica.